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No. ____
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IN THE

Supreme Court of the United States

ABDUL RAOUF HASAN KHALIL,
Petitioner,

v.

BCCI HOLDINGS (LUXEMBOURG), S.A.,
BANK OF CREDIT AND COMMERCE INTERNATIONAL, S.A.,
BANK OF CREDIT AND COMMERCE INTERNATIONAL
(OVERSEAS) LIMITED, INTERNATIONAL CREDIT AND
INVESTMENT COMPANY (OVERSEAS) LIMITED,
ICIC HOLDINGS LIMITED, AND
CREDIT AND FINANCE COMPANY LIMITED,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITION FOR A WRIT OF CERTIORARI

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August 28, 2000

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19pp

QUESTIONS PRESENTED

1. Whether a corporation seeking treble damages under § 1964(c) of the Racketeer Influenced and Corrupt Organizations Act predicated on the actions of its former officers, directors and shareholders can demonstrate that it suffered an injury *by reason of* the alleged RICO violations when:

(a) The corporation was the immediate and primary beneficiary, as opposed to the target, of the alleged RICO activity;

(b) The injury claimed by the corporation was not the preconceived purpose of the alleged RICO activity; and

(c) The corporation's interests were served, rather than harmed, by the alleged racketeering until the racketeering was exposed and prosecuted by the intended victims.

2. Whether the Court should grant review of the judgment below to resolve the express conflict between the opinion of the District of Columbia Circuit in this case and the opinions of the Second and Seventh Circuits in *In re American Express Co. Shareholder Litigation*, 39 F.3d 395 (2d Cir. 1994), and *Mendelovitz v. Vosicky*, 40 F.3d 182 (7th Cir. 1994), with regard to the question presented.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Abdul Raouf Hasan Khalil, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit entered on May 30, 2000.

OPINIONS BELOW

The opinion of the court of appeals for which review is sought, *BCCI Holdings (Luxembourg), S.A. v. Khalil*, is reported at 214 F.3d 168, and is reprinted in the appendix hereto, App., pp. 1a-12a.

The opinion of the district court holding that respondents had suffered an injury by reason of the alleged RICO activity within the meaning of 18 U.S.C. § 1964(c) is reported at 56 F.Supp.2d 14, and is reprinted at App., pp. 13a-113a.

JURISDICTION

The judgment of the court of appeals was entered on May 30, 2000. The jurisdiction of this Court is based on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 1964(c) of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*, provides in pertinent part as follows:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains . . . .

Sections 1962(a) through (d) of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*, are reprinted in pertinent part at App., pp. 114a-115a.

STATEMENT OF THE CASE

A. The Respondents' Claims Against the Petitioner

In this suit, the court-appointed liquidators of the failed Bank of Credit and Commerce International ("BCCI") sued the petitioner, Abdul Raouf Hasan Khalil ("Khalil"), to recover damages allegedly suffered by BCCI by reason of violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962(a)-(d), common law fraud, unjust enrichment and conversion. Respondents alleged that Khalil participated in a conspiracy by which BCCI illegally sought to acquire ownership of First

American Corporation and First American Bankshares, Inc. ("First American") through the use of secret nominee shareholders. Respondents further alleged that Khalil agreed to allow BCCI to use his name to hide non-performing assets and substantial losses from banking regulators while it expanded its operations. Respondents' complaint against petitioners is reprinted in full at App., pp. 116a-191a.

Count I of respondents' complaint alleged that Khalil violated §§ 1962(b), (c) and (d) by allowing BCCI to purchase First American shares in his name with the proceeds of sham, non-recourse loans without disclosing to the United States Federal Reserve that BCCI not only financed the purchase, but was the true beneficial owner of the shares. App., pp. 131a-134a, 156a-162a. Count I further alleged that Khalil gave false testimony to the Federal Reserve Board of Governors concerning the true nature of his purchase in order to obtain regulatory approval. App., pp. 131a-132a, 160a.

Count II of respondents' complaint alleged that Khalil violated §§ 1962(c)-(d) and § 1964(c) by participating in a scheme to manipulate the assets, liabilities and capital of BCCI to give BCCI the false appearance of solvency and thereby prevent regulatory scrutiny. App., pp. 136a-140a, 162-172a. Count II specifically alleged that Khalil allowed BCCI to use his name in connection with hundreds of transactions carried out by BCCI to falsely inflate its capital, generate false profits, conceal non-performing loans and hide huge losses sustained by its Treasury Division in high-risk trading operations. App., pp. 136a-140a.

Count III alleged that Khalil conducted and conspired to conduct the affairs of a brokerage company known as Capcom Financial Services Limited and its subsidiaries ("Capcom") through a pattern of racketeering in violation of §§ 1962(c)-(d) and § 1964(d). App., pp. 172a-184a. The respondents contended that Khalil and others created Capcom for the purpose of siphoning funds from the BCCI Treasury

Division. App., pp. 141a-148a. The funds were then used to capitalize Capcom, fund BCCI's trading operations and conceal non-performing loans on BCCI's books. *Id.*

Count IV alleged that Khalil violated §§ 1962(a) and (d) and § 1964(c) by receiving income from BCCI through a pattern of racketeering and using such income to establish and operate Capcom. App., pp. 184a-188a.

Finally, the respondents asserted claims of common law fraud, conversion and unjust enrichment against Khalil in Counts V, VI and VII. App., pp. 189a-191a.

Khalil denied any wrongdoing and maintained throughout the district court proceedings that he was not the proximate cause of any damages sustained by the respondents.

B. The Proceedings in the District Court

The case was tried to the district court without a jury in January and February 1999. The uncontroverted evidence at trial established that BCCI was neither the target nor an intended victim of the alleged RICO activity and that BCCI's interests were served by the alleged racketeering until the racketeering was exposed and prosecuted by First American and banking regulators around the world. Swaleh Naqvi, the chief executive officer of BCCI and a key figure in the alleged racketeering, testified that the alleged RICO activity was intended to benefit BCCI by allowing BCCI to expand its operations and enhance its profitability. App., pp. 192a-200a. This testimony was not disputed by respondents. With Khalil's assistance as an alleged nominee, BCCI was able to secretly acquire and maintain control over what was once the largest financial institution in Washington, D.C. And, by using Khalil's name to hide non-performing assets and to trade in excess of the limits allowed by law, BCCI was able to inflate its profits and avoid regulatory scrutiny while expanding its operations.

In its findings of fact and conclusions of law, the district court concluded that respondents had sustained injuries "by reason of" the alleged RICO violations within the meaning of 18 U.S.C. § 1964(c). Specifically, the district court found that the following items constituted losses proximately caused by the alleged RICO activity: (1) payments made by BCCI to Khalil as compensation for his alleged participation; (2) expenses paid by BCCI on behalf of Khalil as further compensation for his alleged participation; (3) money transferred from BCCI to Capcom which was used by Capcom to fund trading activities carried out on behalf of BCCI and to conceal non-performing assets that appeared on BCCI's books; and (4) trading losses suffered by BCCI ostensibly as a result of the use of Khalil's name. 56 F.Supp.2d at 55-57. The district court reasoned as follows:

> . . . [L]osses were directly attributable to Khalil's acquisition of a nominal interest in First American through a pattern of racketeering activity. For example, the $27.5 million paid to Khalil, although extorted from BCCI, was a transaction cost proximately imposed on BCCI by virtue of its use of nominees to accomplish the illegal acquisition of, and maintain its control over, First American. Additionally, payment of Khalil's expenses for his services as a nominee were also caused by the pattern of racketeering activity by which Khalil and BCCI acquired their respective interests in First American.

56 F.Supp.2d at 56.

The district court entered final judgment against Khalil on all claims asserted in the respondents' complaint, with the exception of Count IV. App., pp. 201a-204a. As to Count IV, the district court found that the respondents did not prove injury proximately flowing from Khalil's use or investment of funds transferred by BCCI to Capcom. 56 F.Supp.2d at 62-63.

The total non-duplicative amount of actual damages awarded to the respondents was $388,402,534, which the district court then trebled under 18 U.S.C. § 1964(c) for a total of $1,165,207,602. 56 F.Supp.2d at 68-69.

C. The Opinion of the Court of Appeals

Khalil appealed the district court's causation finding, relying on this Court's decision in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 265-270 (1992), which requires RICO plaintiffs to prove a direct relation between the injury asserted and the alleged injurious conduct; the decisions of the Second and Seventh Circuits in *In re American Express Co. Shareholder Litigation*, 39 F.3d 395 (2d Cir. 1994), and *Mendelovitz v. Vosicky*, 40 F.3d 182 (7th Cir. 1994), holding that no proximate cause can exist in a RICO suit brought by a corporation against its officers and directors where the corporation is neither the target nor an intended victim of the alleged racketeering; and the decision of the United States District Court for the Southern District of New York in *BCCI Holdings (Luxembourg), S.A. v. Pharaon*, 43 F.Supp.2d 359 (S.D.N.Y. 1999), dismissing an *identical* complaint filed by respondents against another alleged secret BCCI nominee on the ground that respondents could not satisfy the proximate cause requirement of RICO § 1964(c) because BCCI was neither a target nor an intended victim of the alleged nominee scheme.

The court of appeals reversed the judgment of the district court in regard to the trading losses sustained by BCCI. The court of appeals stated that it could find "no record evidence demonstrating that this specific set of losses is directly traceable to the ability of the perpetrators to hide the losses in Mr. Khalil's name." 214 F.3d at 174.

However, the court of appeals expressly rejected the target analysis of the Second and Seventh Circuits and affirmed the

district court's judgment in all other respects. The court of appeals reasoned as follows:

> The Court [in *Holmes*] never suggests, however, that the only or best way to prove proximate cause is for plaintiff to prove he was the "intended target" and that the injury was the "preconceived purpose" of the RICO activity. We therefore reject [Khalil's] highly restrictive reading of RICO.

214 F.3d at 174.

Khalil seeks review in this Court.

REASONS FOR GRANTING THE WRIT

I. The Decision Of The Court Of Appeals Creates A Circuit Conflict By Holding That Proximate Cause Can Exist In A Suit By A Corporation To Recover Treble Damages Under RICO, 18 U.S.C. § 1964(c), Even Though The Corporation Was The Immediate And Primary Beneficiary Of The Alleged RICO Activity And Even Though The Corporation's Interests Were Served By Such Activity Until The Racketeering Was Exposed And Prosecuted By The Intended Victims.

Rule 10 of the Rules of this Court provides that one of the considerations in favor of granting a petition for writ of certiorari is that "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." The decision of the District of Columbia Circuit in the present case directly conflicts with the decision of the Second Circuit in *In re American Express Co. Shareholder Litigation*, 39 F.3d 395 (2d Cir. 1994), and the decision of the Seventh Circuit in *Mendelovitz v. Vosicky*, 40 F.3d 182 (7th Cir. 1994), both of which require a corporation seeking damages under RICO, 18 U.S.C. § 1964(c), based on the actions of its former officers and directors, to prove that it was either the

target or an intended victim of the alleged RICO activity, and that the alleged injury was the preconceived purpose or intended consequence of the RICO violations. Otherwise, there can be no proximate cause between the alleged RICO violations and the injury claimed by the corporation.

In *In re American Express*, the Second Circuit affirmed the dismissal of a RICO action brought by the shareholders of American Express on behalf of the corporation against certain present and former officers, directors and employees of the corporation on the ground that plaintiffs' allegations failed to satisfy RICO's proximate cause requirement. The complaint alleged that the defendants had conspired with various journalists, politicians and other third parties in a scheme to defame a competitor (Safra) in violation of RICO, 18 U.S.C. §§ 1962(c) and (d). Safra had applied to open a new bank (Safra Republic Holdings, S.A.) to compete with American Express. The intent of the scheme was to publish defamatory material about Safra linking him to organized crime, money laundering and drug trafficking and thereby sabotage his application for a bank license. Safra, Safra Republic Bank Holdings, S.A., and American Express were alleged victims of the scheme. It was also alleged that the corporation had sustained injuries to its business and property by reason of the alleged RICO violations in that it had suffered lost sales and profits, had been exposed to liability by the defendants' acts, and had incurred substantial costs in connection with the alleged scheme, including approximately $2.6 million in bribes paid to certain politicians for their participation in the scheme.

In concluding that the plaintiffs' allegations failed to satisfy RICO's proximate cause requirement, the Second Circuit stated:

> Any fair reading of the complaint in the instant case discloses that the RICO defendants' "preconceived purpose" was most assuredly not to cause some $10

> million in losses to American Express. Instead, the complaint consistently alleges that the RICO defendants' actions, however misguided and injurious to American Express in the end, were undertaken to further American Express's competitive interests . . . .
>
> The injuries alleged thus were neither the "preconceived purpose" nor the "intended consequence" of the RICO defendants' acts. Moreover, any losses to American Express were caused only because the scheme itself was exposed and thus failed. Therefore, the harm to American Express was neither the "necessary result" of the scheme nor more "foreseeable" than Hecht's loss of commissions when his employer's scheme was revealed.[1]

39 F.3d at 400.

Similarly, in *Mendelovitz*, the plaintiff brought a shareholders derivative suit on behalf of Comdisco, Inc. against ten of Comdisco's directors alleging RICO violations arising from a lease dispute between Comdisco and International Business Machines ("IBM"). The complaint alleged that the defendants had engaged in a computer "chop shop" scheme in which they unlawfully subleased an IBM computer system, sold some of its component parts, and then fraudulently concealed their unlawful activities by making various misrepresentations to the press, the Securities and Exchange Commission, and Comdisco's customers to the effect that Comdisco had a right under its lease with IBM to engage in such activities. It was further alleged that, as a proximate result of the defendants' RICO activity, Comdisco sustained damages in the form of (1) expenses incurred in

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[1] "Hecht" refers to the plaintiff in *Hecht v. Commerce Clearing House, Inc.*, 897 F.2d 21, 22-24 (2d Cir. 1990), which held that an employee could not recover in a RICO action against his employer for loss of commissions suffered when a customer discovered his employer's fraud, because the employee was neither the target of the racketeering enterprise nor the competitor nor a customer of the racketeers.

connection with litigation brought by IBM against Comdisco based on the defendants' unlawful acts (including both attorneys' fees and potential damages) and (2) decreased present and future sales from loss of good will. The district court entered summary judgment for the defendants. On appeal, the Seventh Circuit held that a corporation does not have standing to bring a RICO action for damages allegedly accruing from actions of its directors or officers against third parties, as there can be no proximate cause, and affirmed the judgment of the district court.

Application of *In re American Express* and *Mendelovitz* to the present case would require reversal of the decision reached below, as is demonstrated by *BCCI Holdings (Luxembourg), S.A. v. Pharaon*, 43 F.Supp.2d 359 (S.D.N.Y. 1999), a case virtually identical to the present case, save for the name of the defendant. In *Pharaon*, the court dismissed the respondents' complaint against another alleged BCCI nominee, which alleged a scheme to secretly acquire Independence Bank of California. There, as here, the liquidators of BCCI alleged that the former officers and directors of BCCI sought to unlawfully acquire and maintain control over the bank through the use of secret nominees in violation of RICO §§ 1962(b)-(d). There, as here, the liquidators alleged that the defendant assisted the former officers and directors of BCCI in manipulating the books and records of BCCI to avoid regulatory scrutiny. And there, as here, the liquidators alleged that one of the purposes of the scheme was to siphon capital from BCCI for the defendant's personal gain.

In dismissing the complaint for failure to satisfy the proximate cause requirement of RICO § 1964(c), the court applied the holding of the Second Circuit in *In re American Express* to the facts before it and concluded as follows:

> Any fair reading of the complaint in this case discloses that Pharaon and former corrupt managers of BCCI did

> not have a "preconceived purpose" to cause harm to the BCCI Group. Nor do the allegations in the complaint suggest that the BCCI Group itself was the "intended target of the RICO violations." . . . Pharaon's actions, however misguided and ultimately harmful to the BCCI Group, were undertaken to advance the interests of the BCCI Group in surreptitiously acquiring a U.S. Bank despite federal law prohibiting such an acquisition. Banking regulators—not plaintiffs—were targeted and defrauded by the scheme detailed in the complaint. It is equally clear that the harm caused to the plaintiff resulted from the exposure, investigation, and prosecution of the scheme by regulatory authorities, rather than from the predicate acts of wire fraud . . . .

43 F.Supp.2d at 366.

Based on the foregoing, respondents' RICO claims against Khalil would not have survived had they been filed in either the Second or Seventh Circuits. Khalil seeks review in this Court to resolve this circuit conflict.

II. The Decision Of The Court Of Appeals Is Contrary To The Decision Of This Court In *Holmes v. Securities Investors Protection Corp.*, 503 U.S. 258 (1992), Requiring A RICO Plaintiff To Prove A Direct Relation Between The Injury Asserted And The Injurious Conduct Alleged.

Although the decision below is in direct conflict with the decisions of the Second and Seventh Circuits, all three decisions are based on this Court's opinion in *Holmes v. Securities Investors Protection Corp.*, 503 U.S. 258 (1992).

RICO § 1964(c) provides that any person who is injured in his business or property "by reason of" a violation of § 1962 may bring suit therefor and recover treble damages. In *Holmes*, the Court interpreted this "by reason of" language to require RICO plaintiffs to show proximate cause which, in

turn, requires the existence of "a direct relation between the injury asserted and the injurious conduct alleged." 503 U.S. at 267-68. "Thus, a plaintiff who complain[s] of harm flowing merely from the misfortunes visited upon a third person by the defendant's acts [is] generally said to stand at too remote a distance to recover." 503 U.S. at 268-69. The Court explained that a proper analysis of proximate causation for purposes of RICO involves three policy considerations: (1) whether there are more direct victims who can be counted on to vindicate the goals of RICO as private attorney generals; (2) whether it will be difficult to ascertain the amount of plaintiff's actual damages attributable to the defendant's conduct, as opposed to other, independent factors; and (3) whether it will be difficult to apportion damages among all potential plaintiffs, who would otherwise each be entitled to recover the full treble damages. 503 U.S. at 269-71.

The Second Circuit's decision in *In re American Express* was based on a well-reasoned and thorough analysis of these policy considerations as applied to the facts in that case. 39 F.3d at 401. The same is true of the Seventh Circuit's decision in *Mendelovitz*. 40 F.3d 185-86. In sharp contrast, the opinion of the District of Columbia Circuit contains no such analysis. 214 F.3d at 173-74. Neither does the opinion of the district court. 56 F.Supp.2d at 56.

Two of *Holmes'* three policy considerations are applicable here. First, there are more direct victims who can be counted on to act as private attorney generals to vindicate the goals of RICO—detection and prosecution of the alleged racketeering. First American and banking regulators, not BCCI, were the intended and primary victims of the alleged racketeering, and both could be counted on to vindicate the law. Indeed, after the alleged scheme was exposed by banking regulators, First American was the first to file a RICO action for treble damages against the alleged perpetrators, including Khalil.

See, First American Corp. v. Zayed, Civ. No. 93-1309 (JHG) (D.D.C.). It was only after the direct victims had already filed suit that respondents sought to vindicate the law—which is not surprising in light of the fact that BCCI's interests were served by the scheme until it was exposed. BCCI and respondents were therefore motivated to wait and do nothing, as opposed to detect and prosecute the alleged racketeering. For these reasons, BCCI and other similarly situated corporations who stand to benefit from the alleged RICO activity cannot be counted on to vindicate the goals of RICO.

Second, the task of ascertaining the amount of damages, if any, suffered by a corporation who is the intended beneficiary of the alleged RICO activity would require courts to engage in the type of difficult and complex damages analysis that the Court in *Holmes* sought to avoid. While BCCI may have incurred costs in connection with the alleged RICO activity, it is uncontroverted that BCCI also received substantial benefits. Khalil's alleged agreement to act as a nominee allowed BCCI to expand its operations by acquiring what was once the largest financial institution in Washington, D.C. Similarly, Khalil's alleged agreement to allow BCCI to use his name to hide financial losses allowed BCCI to avoid regulatory scrutiny while it continued to expand its operations. In order to determine whether BCCI was injured by reason of the alleged RICO violations and, if so, to ascertain the amount of damages, if any, sustained by BCCI as a direct and proximate result, the court would have to engage in a difficult and complex cost/benefit analysis in which the fees and expenses paid by BCCI to and for the benefit of Khalil for his alleged assistance would have to be weighed against the increased revenues and other benefits received by BCCI through its acquisition of First American. *See, In re Teledyne Defense Contracting Derivative Litigation*, 849 F.Supp. 1369, 1374 (C.D. Cal. 1993) (the overall impact of costs incurred by the plaintiff corporation in connection with a RICO scheme carried out by the

corporation's former officers and directors for the benefit of the corporation would require the very sort of damage analysis that § 1964(c) was designed to avoid). *See also*, II AREEDA AND TURNER, ANTITRUST LAW, P336e at 182 (1978) (explaining that antitrust law does not and should not confer on derivative plaintiffs standing to complain of antitrust violations intended to benefit their own corporation because the very "fact" of damage to the corporation is open to question).

The task of ascertaining the amount of damages directly attributable to the alleged RICO activity in the present case is further complicated by the presence of other independent factors in the chain of causation, such as the independent decision on the part of various third parties to expose the alleged racketeering, the independent decision of the banking regulators to close and liquidate BCCI, and the independent decision of the government to prosecute BCCI and force it to forfeit its interest in First American. Had these decisions not been made, BCCI would not only have not been harmed, but may very well have profited handsomely from the alleged RICO violations. *See, Teledyne*, 849 F.Supp. at 1374 ("a persuasive argument can be made that in the instant case Plaintiffs lack RICO standing because the harms to the Corporation were most directly caused by some identifiable intervening fact, *i.e.*, the independent decisions of the whistle-blowers and the government to initiate and prosecute the violations"). *See also, Mendelovitz*, 40 F.3d 185 ("Any damages that Comdisco purportedly may have incurred flow from IBM's decision to sue Comdisco; had IBM not sued, neither set of damages that Mendelovitz alleges could exist").

Based on the foregoing, the decision of the court below is contrary to the decision of this Court in *Holmes* in regard to the question presented.

CONCLUSION

For all the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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August 28, 2000

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued March 27, 2000 Decided May 30, 2000

No. 99-7171

BCCI HOLDINGS (LUXEMBOURG), S.A., *et al.*,
Appellees

v.

ABDUL RAOUF HASAN KHALIL,
Appellant

Appeal from the United States District Court
for the District of Columbia
(No. 95cv01252)

Stephen R. Johnson argued the cause for appellant. With him on the briefs were James P. Linn and T. Jay Barrymore.

Eric L. Lewis argued the cause for appellees. With him on the brief was A Katherine Toomey.

Before: EDWARDS, *Chief Judge*, HENDERSON and ROGERS, *Circuit Judges*.

Opinion for the Court filed by *Chief Judge* EDWARDS.

EDWARDS, *Chief Judge:* This case involves a civil action resting on the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. §§ 1961, *et seq.* (1994), common law fraud, unjust enrichment, and conversion. The lawsuit was brought by appellees, fiduciaries appointed on behalf of the Bank of Credit and Commerce International ("BCCI") to liquidate the principal BCCI holdings and

recover assets on behalf of depositors and innocent creditors, against appellant, Abdul Raouf Hasan Khalil, and three co-conspirators. The District Court found Mr. Khalil liable on many, but not all, of the claims arising under RICO, common law fraud, unjust enrichment, and conversion. The total non-duplicative amount of actual damages entered in favor of appellees against Mr. Khalil was $388,402,534. The District Court trebled this amount pursuant to 18 U.S.C. § 1964(c) (1994), for a total judgment of $1,165,207,602 against Mr. Khalil.

On appeal, Mr. Khalil raises two principal issues: First, Mr. Khalil claims that the District Court erred under Federal Rules of Civil Procedure 39(b) in denying his late request for a jury trial; second, Mr. Khalil contends that the District Court erred in holding that appellant's alleged RICO and common law tort violations were the legal cause of BCCI's losses. With one exception, we find no merit in Mr. Khalil's arguments.

Appellant's disputed motion for a jury trial was filed more than a year late, after discovery had been concluded and after a trial date had been set. The trial judge denied the motion because of prejudice to the plaintiff, who had prepared for a bench trial. The trial judge also noted that expediency would be served in holding to the existing trial schedule, to avoid undue delay and potential complications with other trials involving related issues. In short, the District Court found that counsel's inexcusable neglect in failing to request a jury trial in a timely fashion waived defendant's right to a jury trial. We find no error in this judgment, for the trial judge acted within the discretion afforded him under Rule 39(b).

We also affirm most of the District Court's judgments on the merits. As the court's opinion indicates, *see BCCI Holdings (Luxembourg), Societe Anonyme v. Khalil ("Khalil")*, 56 F. Supp. 2d 14 (D.D.C. 1999), there is ample evidence in the

record to show but-for and proximate causation, supporting most of the judgments on the RICO and the common law tort claims. We can find no record evidence, however, to support the District Court's finding that Mr. Khalil is liable to BCCI for damages in the amount of $62,021,193 for certain silver and copper trading losses.

We reverse the District Court's judgment for damages resting on the silver and copper trading losses. We affirm the District Court's judgment on all other points. The case will be remanded for the District Court to recalculate the damages that are due to appellees.

I. FACTS

This lawsuit was spawned by BCCI's international collapse, which was the largest international bank failure in history. *See Khalil,* 56 F. Supp. 2d at 20. BCCI's court-appointed liquidators filed a complaint on July 3, 1995 to recover damages suffered by BCCI as a result of Mr. Khalil's alleged violations of RICO, common law fraud, unjust enrichment, and conversion. The liquidators charged that Mr. Khalil participated in a conspiracy with BCCI's management that allowed BCCI secretly to acquire ownership and maintain control of First American Corporation and First American Bankshares, Inc. (collectively "First American"). This illegal scheme operated through the use of nominee shareholders—like Mr. Khalil—who allowed BCCI to hide financial losses from bank regulators.

Mr. Khalil is a wealthy Saudi Arabian businessman and former government official who deposited large amounts of money in BCCI. He may have been BCCI's largest depositor. *See id.* at 21. In their complaint, the liquidators claimed that, in the late 1970s and 1980s, BCCI's former management sought out Mr. Khalil and paid him large sums of money in exchange for the use of his name and prestige to disguise three schemes: (1) Mr. Khalil agreed to act as a nominee

shareholder of First American Bank's parent corporation to disguise BCCI's illegal acquisition of an American bank without required regulatory approval; (2) Mr. Khalil agreed to serve as a nominee shareholder of BCCI Holdings to disguise the truth about BCCI's artificially and misleadingly inflated capital resources and support; and (3) Mr. Khalil agreed to allow BCCI to use his name, both individually and on behalf of his corporations, to disguise risky investments and to create the false impression that BCCI was servicing large loans that were actually in default. *See id.* The liquidators contended that Mr. Khalil's assent to these schemes prevented BCCI's true financial condition from becoming apparent much earlier, stopped BCCI from closing down much sooner, and thus precipitated significant financial losses for thousands of creditors and depositors.

Not all of the liquidators' claims against Mr. Khalil rested on a passive view of Mr. Khalil's relationship with BCCI. The liquidators also asserted that Mr. Khalil and Mr. Syed Ziauddin Ali Akbar conspired to loot BCCI's assets so that they could create and fund a commodities brokerage that they called Capcom UK. Mr. Akbar, who was a BCCI officer from 1976 to 1986 and was in charge of BCCI's Treasury Division from 1982 to 1986, created loans in BCCI's books to Mr. Khalil and his companies. Mr. Akbar never intended, however, for these loans to be repaid. In particular, between October 1984 and December 1984, Mr. Akbar transferred $100,000,000 to Capcom that was not authorized by Mr. Akbar's superiors. Mr. Akbar also transferred $25,000,000 to Capcom in June 1985 and $136,000,000 to Capcom between January and April 1986. *See id.* at 42-43. For his part, on August 20, 1985, Mr. Khalil negotiated a $12.5 million check from BCCI as a payment for his share of the "profits" from the trading operations, received a $15 million "parting gift" on July 3, 1987 that he had cajoled when he withdrew his deposits from BCCI, and, on June 25, 1987, coaxed a

$17,000,000 "loan" from BCCI to General Securities Corp., a company co-owned by Mr. Khalil and Mr. Akbar that had an account at Capcom. *See id.* at 43-45.

Mr. Khalil does not disavow this general characterization of the facts. And he does not claim that he was innocent. His appeal is based on two much more narrow grounds. The first ground centers on the District Court's denial of Mr. Khalil's request for a jury trial. The liquidators filed their complaint on July 3, 1995, and Mr. Khalil filed his answer on February 10, 1997. Subsequently, on April 21, 1998, the parties had a status conference and agreed to schedule a bench trial to begin on January 25, 1999. On April 24, 1998, Mr. Khalil's attorney filed a motion for a jury trial, claiming that counsel had inadvertently omitted a jury demand from Mr. Khalil's answer to the complaint. Under FED. R. CIV. P. 38(b), the jury demand was over a year late; it was therefore deemed "waived" under FED. R. CIV. P. 38(d). Mr. Khalil's attorney argued, however, that the tardy demand for a jury trial could be granted by the District Court under FED R. CIV. P. 39(b).

On October 8, 1998, guided by the Supreme Court's decision in *Pierce v. Underwood*, 487 U.S. 552, 562 (1988), the District Court denied Mr. Khalil's motion for a jury trial. The court found that (1) Mr. Khalil's lawyer's claimed inadvertent omission was not excusable, given that counsel had taken so long to discover the omission, discovery was complete, the deadline for motions had passed, and the court and the opposing party had prepared for a bench trial; (2) plaintiffs would be significantly prejudiced if the court were to grant Mr. Khalil's tardy request for a jury trial, because plaintiffs had premised many of their decisions in discovery upon their understanding that there would be a bench trial; (3) a bench trial would be much more efficient than a jury trial; (4) granting Mr. Khalil's motion would translate into delays for other litigants awaiting trial; (5) given Mr. Khalil's poor health, the court would be ill-advised to delay Mr. Khalil's

case pending resolution of the other cases; and (6) there was no real threat of bias or prejudice, even though the court had presided over related criminal and civil cases. *See BCCI Holdings (Luxembourg), Societe Anonyme v. Khalil,* Civ. Act. No. 95-1252, Mem. Op. (D.D.C. Oct. 8, 1998) ("Mem. Op."), *reprinted in* Joint Appendix ("J.A.") 277.

The issues on the merits raised by Mr. Khalil focus on the District Court's award of damages and the underlying findings of causation. The District Court generally agreed with the liquidators that Mr. Khalil was liable for receiving money for his participation in the various nominee schemes, though the trial court did not accept all of the liquidator's claims. In particular, the court found that Mr. Khalil was liable for $27,500,000 that he received as direct payments from BCCI for his participation in the nominee schemes, $15,249,283 that BCCI paid for Mr. Khalil's expenses, $47,069,808 that BCCI paid to Mr. Khalil's companies, an additional $236,562,250 that BCCI sent to Capcom, and $62,021,193 that represented the losses that BCCI suffered from silver and copper trading that involved and was facilitated by accounts in Mr. Khalil's name. The final result was that the liquidators were awarded damages of $388,402,534, which were tripled to $1,165,207,602 pursuant to 18 U.S.C. § 1964(c). *See Khalil,* 56 F. Supp. 2d at 66-69. This appeal followed.

II. Discussion

A. Standard of Review

The parties agree that the standard of review covering the District Court's denial of Mr. Khalil's Rule 39(b) motion for a jury trial is abuse of discretion. The parties also agree that the findings on the claims based on common law fraud, unjust enrichment, and conversion are reviewed under the clearly erroneous standard. The parties disagree, however, over the standard of review covering the findings of proximate cause under RICO.

On this last point, we find the Supreme Court's decision in *Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 840-41 (1996), to be persuasive. In *Sofec*, the Court explained that "[t]he issues of proximate causation and superseding cause involve application of law to fact, which is left to the factfinder, subject to limited review." *Id.* Mr. Khalil argues that *Sofec* is inapposite, because the standard enunciated there is limited to admiralty cases. There is nothing in the Court's opinion, however, that so narrows its applicability. It seems clear here, just as in *Sofec*, that findings on proximate causation involve mixed questions of law and fact subject to limited review. In any event, even if we were to engage in *de novo* review, as Mr. Khalil suggests, our judgments on the matters in issue would not change.

B. The Jury Issue

Mr. Khalil's jury-demand argument is specious. Mr. Khalil did not file a jury demand either when the liquidators filed their complaint on July 3, 1995 or when he filed his answer to the complaint on February 10, 1997. It took almost three years from the filing of the complaint and more than a year after the filing of the answer for Mr. Khalil to bring it to the District Court's attention that he wanted a jury trial. By then, the trial court had scheduled the case for a bench trial, discovery had been extended and closed, and the deadline for motions had already passed.

Federal Rule of Civil Procedure 38 is clear that a party waives his right to a trial by jury if he does not "(1) serv[e] upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue, and (2) fil[e] the demand as required by Rule 5(d)." FED R. CIV. P. 38. A party who fails to make a timely request for a jury trial may avoid waiver and secure a jury trial only if the District Court *"in its discretion"* acts favorably on such a request. FED. R. CIV. P. 39(b).

Under Rule 39, a trial court may abuse its discretion in denying a late request for a jury trial. This does not mean, however, that a trial court must indulge a presumption in favor of the neglectful party when faced with a late demand. Thus, a trial court is not required to grant a Rule 39(b) request based on nothing but inadvertence, because, "[t]hough the court might, in its discretion, have ordered jury trial, it [is] under no obligation to do so." *May v. Melvin*, 141 F.2d 22 (D.C. Cir. 1944); *see also Wall v. National R.R. Passenger Corp.*, 718 F.2d 906, 910 (9th Cir. 1983) ("The record does not demonstrate any reason, other than counsel's inadvertence, for the failure to comply with rule 38(b). The district judge did not abuse his discretion."); *Rhodes v. Amarillo Hosp. Dist.*, 654 F.2d 1148, 1154 (5th Cir. Unit A 1981) (finding even under a presumption in favor of granting untimely jury demands that "[i]t is not an abuse of discretion by a District Judge to deny a Rule 39(b) motion . . . when the failure to make a timely demand for a jury trial results from mere inadvertence on the part of the moving party"); *Paramount Pictures Corp. v. Thompson Theatres, Inc.*, 621 F.2d 1088, 1090 (10th Cir. 1980) ("By failing to make a timely demand defendants waived their rights. The trial court then has the discretion, upon motion, to order trial by jury. That discretion is broad, and the court's exercise, either to grant or to deny a jury trial, is reversible only if it appears from all of the facts and circumstances that the court abused its discretion." (internal citations omitted)).

In this case, mere inadvertence is the only leg upon which Mr. Khalil can stand, and it is at best a very weak base. Mr. Khalil does not deny that he waived his right to a jury. Rather, he claims that despite his mistake, the burden should be on the opposing party to present strong and compelling reasons why the late demand for a jury trial should not be granted. This is not what Rule 39 says, however. The rule merely states that, upon motion from a party like Mr. Khalil,

the District Court *"may"* (not shall) *"in its discretion"* order a trial by jury. Absent an abuse of discretion by the trial court, a defaulting party who has already *waived* the right to a jury trial under Rule 38(d) has no viable claim. This does not mean that a trial court can simply ignore a Rule 39(b) motion or whimsically deny it for no good reason. But trial courts have wide latitude under the abuse of discretion standard to weigh the merits of late demands for jury trials.

The District Court's judgment in this case easily survives review under the abuse of discretion standard. The District Court reasonably considered the factors enunciated by the Supreme Court in *Pierce v. Underwood*, 487 U.S. 552. In *Pierce*, the Court noted that,

> [o]ver the years, appellate courts have consistently upheld the trial judges in allowing or refusing late-demanded jury trials, but in doing so have laid down two guidelines for exercise of the discretionary power. The products of cumulative experience, these guidelines relate to the justifiability of the tardy litigant's delay and the absence of prejudice to his adversary.

Id. at 562. Following the *Pierce* Court's lead, the District Court found that Mr. Khalil's delay was not justified, because it was the product of mere inadvertence, and "where the length of time to discover the error is as long as here, where discovery is complete and the motions' deadline has passed, and where the Court and the opposing party have come to rely on a bench trial, this factor weighs against granting a trial by jury." Mem. Op. at 8, *reprinted in* J.A. 284. The trial court also reasonably found that BCCI had made a "plausible and specific enough showing of prejudice." *Id.* at 9, *reprinted in* J.A. 285. In short, we have no basis upon which to second-guess the judgment of the District Court.

C. Proximate Causation

On the merits of this case, Mr. Khalil first posits that the District Court's standard of proximate cause under RICO was too lax. He argues that "a RICO claimant must prove that he was the 'intended target' of the RICO scheme and that the alleged injury was the 'preconceived purpose' of the RICO activity." Br. of Appellant at 35. In our view, appellant's argument on this point is simply wrong.

In *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992), which involved a civil action under RICO, the Court considered the meaning of the statutory phrase—"[a]ny person injured in his business or property by reason of a [RICO] violation"—found in 18 U.S.C. § 1964(c). The Court's discussion is illuminating:

> This language [18 U.S.C. § 1964(c)] can, of course, be read to mean that a plaintiff is injured "by reason of" a RICO violation, and therefore may recover, simply on showing that the defendant violated § 1962, the plaintiff was injured, and the defendant's violation was a "but for" cause of plaintiff's injury. This construction is hardly compelled, however, and the very unlikelihood that Congress meant to allow all factually injured plaintiffs to recover persuades us that RICO should not get such an expansive reading.
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> . . . Congress modeled § 1964(c) on the civil-action provision of the federal antitrust laws, § 4 of the Clayton Act.
>
> . . . [W]e [have] held that a plaintiff's right to sue under § 4 required a showing that the defendant's violation not only was a "but for" cause of his injury, but was the proximate cause as well.
>
> The reasoning applies just as readily to § 1964(c) . . . . Proximate cause is thus required [under RICO].

Id. at 265-68.

The Court in *Holmes* defined proximate cause as essentially reflecting "ideas of what justice demands, or of what is administratively possible and convenient." *Id.* at 268. Proximate cause exists to ensure that a random third party who suffers "merely from the misfortunes visited upon [him] by the defendant's acts" does not recover. *Id.* It also ensures that courts do not get ensnared in administratively complex questions over factual causation and apportionments of damages. The Court reasoned that a proximate cause requirement would sufficiently deter injurious conduct, because "directly injured victims can generally be counted on to vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely." *Id.* at 269-70. The Court never suggests, however, that the only or best way to prove proximate cause is for a plaintiff to prove he was the "intended target" and that the injury was the "preconceived purpose" of the RICO activity. We therefore reject appellant's highly restrictive reading of RICO.

With one exception, the record in this case offers ample evidence to support the District Court's findings that Mr. Khalil was the proximate cause of RICO injuries suffered by BCCI, as well as the District Court's findings of common law violations. The District Court's judgments on these points are well-explained in its published opinion; that opinion needs no revision, save for one point.

The one exception centers on the $62,021,193 in silver and copper trading losses that the District Court found were directly linked to the use of Mr. Khalil's name. Unlike the other payments, which are directly traceable to Mr. Khalil's fees for participating in the nominee scheme, the silver and copper trading losses are much more contingent on other factors. Without much other analysis, the trial court reasoned that, "[a]lthough market conditions played an important role in bringing those losses about, the use of Khalil's name remained a substantial factor causing those losses. These

losses can be traced directly to the fraudulent use of Khalil-owned companies." *Khalil*, 56 F. Supp. 2d at 61. The District Court and appellees seem to claim that the bank's losses would have been prevented or reduced had the bank known about the futures trading at issue. In particular, they suggest that the Board of Directors had placed limits on investments and that Khalil facilitated the avoidance of these limits by lending his name to fraudulent endeavors, thus causing the bank to suffer losses. We can find no record evidence demonstrating that this specific set of losses is directly traceable to the ability of the perpetrators to hide the losses in Mr. Khalil's name. We therefore reverse the judgment against Mr. Khalil resting on the disputed silver and copper trading losses.

III. CONCLUSION

We reverse the judgment of the District Court resting on the silver and copper trading losses. We affirm the judgment of the District Court in favor of appellees on all other points.

The case is hereby remanded to the District Court to recalculate the damages that are due to appellees.

So ordered.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed Jun 23, 1999]

Civil Action No. 95-1252 (JHG)

BCCI HOLDINGS (LUXEMBOURG),
SOCIETE ANONYME, *et al.*,
Plaintiffs,

v.

ABDUL RAOUF HASAN KHALIL, *et al.*,
Defendants.

OPINION AND ORDER

In July 1991, banking regulators around the world seized the corporations collectively known as the Bank of Credit and Commerce International ("BCCI"), uncovering the largest international bank failure in history. Eight years later, the effort to determine how the BCCI debacle happened and who is responsible for the fraud remains ongoing. This lawsuit, brought by the court-appointed Liquidators of the BCCI Group emerged out of that process.[1]

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[1] 'The "BCCI Group" and "BCCI," as used herein, refer collectively to BCCI Holdings (Luxembourg) S.A. ("BCCI Holdings"), its two operating subsidiaries, Bank of Credit and Commerce International S.A. ("BCCI S.A."), Bank of Credit and Commerce International (Overseas) Limited, ("BCCI Overseas"), and three affiliate companies, ICIC Holdings Limited ("ICIC Holdings"), International Credit and Investment Company (Overseas) Limited ("ICIC Overseas"), and Credit and Finance Company Limited ("CFC").

As is discussed more fully below, after BCCI's operations were brought to a halt, the courts in the United Kingdom, Luxembourg, and the Cayman Islands with supervisory authority over the various BCCI Group entities

The defendants are two individuals, Abdul Raouf Hasan Khalil ("Khalil") and Syed Ziauddin Ali Akbar ("Akbar"), and two companies owned and controlled by Khalil and Akbar—Capcom Financial Services Limited ("Capcom UK"), and Capcom Futures Inc. ("Capcom US"). Only Khalil contested this suit; Akbar and the corporations have defaulted.

Khalil is extremely wealthy, and was perhaps the largest depositor in BCCI. In 1987, Khalil withdrew nearly $100 million in deposits and interest from BCCI. The Liquidators did not contest Khalil's right to the deposited funds. What the Liquidators do claim is that in the late 1970s and early 1980s, BCCI's former management approached Khalil, offering to pay him handsomely for the use of his name and prestige to disguise three fraudulent schemes. According to the Liquidators, Khalil agreed to:

(1) act as a nominee shareholder of the parent corporation of First American Bank—once the largest bank in Washington, D.C.—to disguise the fact that BCCI had illegally acquired an American bank without proper regulatory approval;

(2) act as a nominee shareholder of BCCI Holdings to disguise the fact that BCCI had considerably less

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appointed Liquidators to wind up the affairs of the corporations. The Liquidators of BCCI Holdings, BCCI SA, BCCI Overseas, ICIC Overseas, ICIC Holdings and CFC are sometimes referred to, collectively, as the Court Appointed Fiduciaries. The plaintiffs in this lawsuit are the corporations, but for the sake of convenience the Court will refer to the plaintiffs as the "Liquidators." *Cf. United States v. BCCI Holdings (Luxembourg) S.A.*, 48 F.3d 551, 554 (D.C. Cir. 1995) ("bank liquidator . . . stands in the shoes of the bank it represents . . . "), *aff'g*, 833 F. Supp. 22 (D.D.C. 1993). The legal claims asserted in this lawsuit represent "assets" of the corporations in the view of the Liquidators. This lawsuit was brought to "liquidate" those assets.

capital and support than was represented to depositors, regulators, and the public; and

(3) allow his name, and that of his companies, to be used by BCCI's investment arm to disguise BCCI's risky investments and to give the appearance that certain sizable loans were being serviced when, in truth, they were in default.

The Liquidators further alleged that BCCI directly paid Khalil nearly $30 million for this use of his name and that he reaped substantially more by less direct means. The Liquidators alleged that if Khalil had not allowed his name and prestige to be used to disguise BCCI's true financial condition, the bank would have been closed down much sooner, preventing significant financial losses to thousands of creditors and depositors.

Separately, the Liquidators also alleged that Khalil conspired with Akbar—a BCCI insider who managed the bulk of BCCI's assets until 1986—to create a commodities brokerage, Capcom, through which Khalil and Akbar further siphoned substantial BCCI assets.[2]

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[2] The Liquidators sought to establish Khalil's liability for these schemes under seven legal theories. Count I alleges racketeering under RICO based upon Khalil's acquisition of a nominee interest in First American. The predicate acts constituting the pattern of racketeering include wire and mail fraud, violations of the Travel Act, financial institution fraud and money laundering. Count II also is a civil RICO count, alleging racketeering in connection with the capitalization and operation of the BCCI Group through manipulation of BCCI balance sheets, including fraudulent transactions using U.S. bank accounts and U.S. wires. Counts III and IV allege RICO violations based upon the defendants' investment in and operation of the Capcom entities, which was accomplished through the diversion of funds from the BCCI Group to Khalil and Akbar through wire and mail fraud, money laundering and violations of the Travel Act. Counts V, VI and VII allege common law fraud, unjust enrichment, and conversion, respectively.

Shortly after the complaint was filed, Khalil moved for dismissal. That motion was denied. *See BCCI Holdings (Luxembourg) S.A. v. Khalil,* 20 F. Supp.2d 1, 7 (D.D.C. 1997). After lengthy discovery this case was set down for a bench trial. Khalil moved for trial by jury under Rule 39(b) of the Federal Rules of Civil Procedure. That motion also was denied. *See BCCI Holdings (Luxembourg) S.A. v. Khalil,* 182 F.R.D. 335, 340 (D.D.C. 1998). Trial to the Court commenced on January 25, 1999 and continued on January 27, January 28, February 1 and February 11, 1999.

This Opinion and Order constitute the Court's findings of fact and conclusions of law as required by Rule 52(a) of the Federal Rules of Civil Procedure.[3] Any conclusions of law

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[3] The findings of fact herein are subject to differing standards of proof. As to the civil RICO counts, it appears that facts are to be proven by a preponderance of the evidence. *See Sedima, S.P.R.L. v. Imrex Co.,* 473 U.S. 479, 491 (1985) (appearing to endorse a preponderance standard); *Richards v. Combined Ins. Co. of Am.,* 55 F.3d 247, 249 (7th Cir. 1995) (preponderance standard applies to all elements of a civil RICO claim); *cf.* H.R. 1717, 102d Cong., 1st Sess. § 4-6 (1991) (proposed legislation requiring clear-and-convincing standard for civil RICO claims). However, the Liquidators' claim of common law fraud in Count V requires clear and convincing evidence. *See Hercules & Co., Ltd. v. Shama Restaurant Corp.,* 613 A.2d 916, 923 (D.C. 1992).

In this case, the difference in standards is immaterial as all of the findings of fact herein are supported by clear and convincing evidence. The Liquidators and Khalil agreed on many of the "contextual facts." For instance, they agreed that former management of BCCI engaged in massive fraud, and that defendant Akbar played a pivotal role in that fraud. The central issues at trial focused on what Khalil knew about the fraud and the extent to which he participated in its perpetration. The Liquidators presented substantial documentary and testimonial evidence demonstrating that Khalil was a knowing and willing participant in the fraudulent schemes alleged. Khalil responded to many of the central allegations with only his own testimony, unsupported by documents that he claims once existed. Khalil's testimony was discredited in critical

that constitute findings of fact or findings of fact that constitute conclusions of law shall be considered as having been determined accordingly. Having considered all the evidence, arguments, the parties' proposed findings of fact and conclusions of law, and the entire record in this matter, the Court will enter judgment in the amount of $388,402,534, not including attorneys' fees or costs, in favor of the Liquidators on Counts I, II, III, V, VI, and VII. The Liquidators did not meet their burden on Count IV. Pursuant to 18 U.S.C. § 1964(c), the damages are trebled to $1,165,207,602.

I. DRAMATIS PERSONAE

A. Agha Hasan Abedi

BCCI was the brainchild of Agha Hasan Abedi ("Abedi"), who, in 1972, established what he hoped would become an international Islamic bank. Initially, BCCI grew according to plan. Until taken under control by authorities around the

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respects by internal inconsistencies and by substantial contradictory evidence from other sources.

On a separate note, a great deal of the testimony in this case consisted of designated portions of deposition testimony. The Court received full transcripts marked to show where designations begin and end. In certain instances, one or both parties' designations begin with questions and answers that follow on from the immediately preceding question and answer. The Court asked the parties to consider whether she could treat as evidence those peripheral questions and answers "which ought in fairness to be considered with the part introduced." *Cf.* FED. R. CIV. P. 32(a)(4). The parties responded, correctly, that they ought to have the opportunity to know precisely which portions of undesignated testimony the Court had in mind, and an opportunity to be heard, before such testimony could be treated as evidence. Because the importance of the peripheral questions and answers was itself peripheral, the Court relied only on those portions of testimony admitted into evidence when reaching her findings of fact and conclusions of law.

world on July 5, 1991, the BCCI Group operated a coordinated international banking network, which at its peak had more than 400 branches in approximately 70 countries. The BCCI Group consisted of a number of corporate entities, including the corporate plaintiffs enumerated herein.[4] The BCCI Group's international banking network included offices in several of the United States, including the State of New York. Abedi served as the top corporate officer of the BCCI Group from 1973 until 1988, when he suffered a heart attack. Abedi did not testify in this trial. Indeed, the Court heard evidence that Abedi is deceased. *See* Trial Transcript ("Tr.") (Testimony of Christopher Morris, UK-appointed Liquidator) at 136-37.[5]

B. Swaleh Naqvi

Abedi's chief lieutenant in the bank was Saiyid Mohammad Swaleh Naqvi ("Naqvi"), who succeeded Abedi in 1988. Naqvi remained in the senior executive position in the BCCI Group until 1990, when control of the BCCI Group formally passed to the sovereigns of Abu Dhabi. Naqvi served time in prison in Abu Dhabi before coming to the United States to plead guilty to charges here. He presently is

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[4] BCCI Holdings was at relevant times a holding company incorporated under the laws of Luxembourg. BCCI SA was at relevant times a banking corporation organized under the laws of Luxembourg. BCCI Overseas was at relevant times a banking corporation organized under the laws of the Cayman Islands. ICIC Overseas was at relevant times a banking corporation organized under the laws of the Cayman Islands. ICIC Holdings was at relevant times a corporation organized under the laws of the Cayman Islands. CFC was at relevant times a banking corporation organized under the laws of the Cayman Islands.

[5] In a separate, criminal case pending in this Court, *United States v. BCCI Holdings (Luxembourg) S.A.*, Crim. No. 91-0655 (Def. No. 5) (D.D.C.), charges against Abedi remain pending because the United States has not been able to determine for sure whether he is deceased.

incarcerated in FCI Allenwood, Pennsylvania. As part of his plea agreement, Naqvi agreed to cooperate with regulatory and law enforcement authorities attempting to unravel the intricacies of the rise and fall of BCCI. As with most of the fact witnesses in this case, Naqvi testified by deposition. *See* Fed. R. Civ. P. 32(a)(3) (listing circumstances in which deposition testimony may substitute for live testimony at trial).[6] Naqvi was deposed in this case and in the *First American* case willingly; he did not understand that his plea agreement required him to testify in either case.

C. Imran Imam

Scrivener to the fraud was Imran Mohammed Ahmad Imam ("Imam"). Imam was a BCCI officer who assisted Naqvi from 1977 to 1991. Imam's principal assignment was to maintain records of transactions. For example, BCCI extended loans to the individuals who became the record shareholders of First American's parent corporation. Some of these loans were genuine extensions of credit, secured only by the shares; other "loans" were created to disguise BCCI's direct equity investment in First American. Imam kept detailed records of these transactions. Financing for the record shareholders of BCCI Holdings was done in similar fashion, and Imam kept records concerning the holdings of both the genuine investors and the nominees. Imam testified

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[6] Naqvi's testimony came in through his deposition in this case, and his deposition in a separate case brought by First American Corporation in which Khalil also was a defendant. *See generally First American Corp. v. Al-Nahyan*, 17 F. Supp.2d 10 (D.D.C. 1998) [That case is referenced herein as *"First American"* or *"FAC."*]. Due to the overlapping allegations, many of the witnesses in this case also were deposed in *First American*. Shortly before the jury trial in *First American* was set to commence on October 5, 1998, all but two defendants had settled. The claims against Khalil and the remaining defendant were dismissed, obviating the need for trial.

through deposition in this case. Khalil's counsel declined the opportunity to attend and cross-examine him.

D. Ziauddin Akbar

Defendant Akbar was a BCCI officer from approximately 1976 to 1986 and was in charge of BCCI's Treasury Division from 1982 to 1986. As head of the Treasury Division, Akbar was responsible for managing and investing BCCI's funds. Additionally, Akbar was the account officer for certain major customers of BCCI, including Khalil. At trial, Khalil and the Liquidators agreed that Akbar was central to most of the schemes alleged in the complaint, a rogue *extraordinaire* principally responsible for establishing shell corporations to engage in sham transactions so as to misrepresent BCCI's economic situation to the world, gambling BCCI's assets in the commodities markets and disguising losses therefrom, transferring large sums of money in and out of shell corporations in which he had an undisclosed interest, and other illegal activities. After huge losses in the Treasury operations came to light internally, Akbar left BCCI in 1986. He continued to receive a salary for some time thereafter.

After leaving BCCI, Akbar engaged principally in managing investment and financial trading businesses, acting as both the behind-the-scenes manager of Capcom—his joint venture with Khalil—as well as manager of his own London-based Futures Advisory Services ("FAS").

In 1988, authorities in the United States arrested Akbar in connection with allegations that General Manuel Noriega's drug money was being laundered through BCCI and Capcom. Although other BCCI employees were convicted in connection with those allegations, it appears that Akbar and Capcom US were cleared. However, in September 1993, after BCCI had been seized, Akbar pled guilty to 16 counts of false accounting in the United Kingdom.

Akbar was released from prison in the United Kingdom during the pendency of this litigation and returned to Pakistan. Akbar was deposed in Pakistan in both this case and in *First American*. Those deposition transcripts were in *First American*. Those deposition transcripts were introduced at trial.[7]

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[7] In his depositions, Akbar was laconic. The Liquidators sought to embellish Akbar's deposition testimony with statements he made to the London Police's Serious Fraud Office ("SFO") in 1993. Akbar's statements in these interview sessions were not sworn, but the interview was taped and transcribed. At the time Akbar gave this interview, it appears that he had been granted limited immunity for statements made during the interview by prosecuting officials in the United Kingdom, but not by federal and New York prosecutors in the United States, who also attended and participated in the SFO interview sessions.

Prior to trial, Khalil moved *in limine* to prevent the Liquidators from introducing any of Akbar's statements to the SFO as inadmissible hearsay. The Liquidators opposed the motion on the theory that Akbar had incorporated some of these statements into his deposition testimony. The Court rejected that theory of admissibility, *see Khalil*, 184 F.R.D. 3, 8 (D.D.C. 1999), but left open the possibility that some statements may be admissible as recorded recollections under Rule 803(5) of the Federal Rules of Evidence. *See id.* Embracing the Court's suggestion, the Liquidators proffered a limited number of Akbar's statements to the SFO to be admitted as recorded recollections. Over Khalil's objection the Court ruled these statements would be admissible. *See* Mem. Op. and Order of Jan. 21, 1999 at 4. In the January 21, 1999 Order, the Court also provided Khalil with an opportunity to counterdesignate any portions of the same SFO statements that he thought, in fairness, should be included to put those portions proffered by the Liquidators in context. *Cf.* Fed. R. Civ. P. 32(a)(4) (allowing for counterdesignation of deposition testimony at trial).

Going far beyond contextualization, Khalil's counsel proffered numerous portions of Akbar's SFO statements from different interview sessions on different topics. Most of these statements were hearsay, falling considerably outside the recorded recollections proffered by the Liquidators. At the opening of trial, the Court observed that Khalil's proffer would be taken in as evidence in his case rather than as an enhancement of the evidence offered by the Liquidators. *See* Tr. at 2-3.

E. Abdul Khalil

Defendant Khalil is a citizen and resident of Saudi Arabia. He has been married for 36 years to Taheya Badeeb, with whom he lives in Jeddah, Saudi Arabia along with their two sons, daughter, and grandchildren. Khalil was educated in Saudi Arabia and Cairo, Egypt, where he studied history. Khalil developed a passion for museums and antiquities which he has pursued throughout his adult life.

When growing up, Khalil stood out as one of the brightest students in his class. After he completed school, he was one of a select group recruited to be trained in electronics and air traffic control at Dharan Air Force Base in Saudi Arabia. While at the base, Khalil alone was selected to work with United States Air Force personnel. Through that contact, Khalil learned English.[8]

The Liquidators chose not to object to Khalil's proffer on hearsay grounds, asking only to be allowed to counterdesignate from the interview sessions proffered by Khalil. The Court granted that request.

Rule 803(5) requires that recorded recollections be read into the record rather than received in documentary form, regardless of whether trial is to a jury or to the Court. That was done. As a result, citations to the trial transcript referring to Akbar's testimony reference these SFO statements.

By opting to introduce numerous hearsay statements by Akbar to the SFO, the Court finds that Khalil did not preserve his hearsay objection to the Liquidators' original proffer. But even if he had, Akbar's SFO statements were unnecessary to the findings herein. Although some of those statements have been cited below, independent evidence supports all of the Court's findings and conclusions, all of which would be the same even if none of Akbar's SFO statements had been admitted. Given Akbar's obvious biases and his role at the center of the fraud, the Court gave little weight to any of his testimony.

[8] At the time his deposition was taken in this case, Khalil demonstrated a working command of English, although he occasionally sought clarification from an interpreter.

Upon completion of his training, Khalil served as an air traffic controller for the Civil Aviation Department of Saudi Arabia and an instructor of air traffic control. He also was recruited to perform air traffic control duties during Saudi Arabia's war with Yemen. After 22 years of service, Khalil retired and entered the real estate business. For reasons not entirely clear from the record, the real estate market in Saudi Arabia surged in such a way as to allow phenomenal profits—such as a 400 million riyal return on a 14 million riyal investment (plus the cost of improvements) within a short period. Through such dealings, Khalil became extremely wealthy.

As is detailed below, Khalil deposited millions of dollars, in various currencies, in BCCI in the late 1970s and early 1980s. He withdrew those deposits, plus interest, in 1987, but he maintained contact with BCCI beyond that period. After BCCI was seized, Khalil came to London voluntarily to be interviewed by the SFO in connection with its investigation of Akbar. Unlike most of the other persons closely associated with BCCI, Khalil was not criminally charged, either in the United Kingdom or the United States. However, the Board of Governors of the Federal Reserve did bring an administrative enforcement action against Khalil in connection with his record shareholding in the parent corporation of First American. Although, in September 1992, Khalil granted Federal Reserve investigators an interview in his home in Saudi Arabia, and although, in June 1997, Khalil did travel to the United States to be deposed in *First American,* Khalil has not formally been served with the Federal Reserve's administrative charges, which remain pending.

At present, Khalil is in poor health. He spends considerable time working on his projects, including a huge museum filled with more than 60,000 antiquities, which he and his family have donated to the poor. Another project, Altayebat City,

consists of classrooms, shops and 20 different museums to train, educate, clothe and feed the poor.

Due to poor health, Khalil's deposition in this case was postponed, and was taken well after discovery had closed. Because it appeared likely that Khalil would be unable to appear at trial, the Liquidators videotaped the deposition to allow the Court to see, hear and observe Khalil's demeanor. Most of the 800-page transcript was admitted into evidence, along with the videotaped version in CD-ROM format.[9] The Court regrets that Mr. Khalil was unable to testify in person at trial.

F. Kamal Adham and Sayed Jawhary

Khalil's success in school and in the civil service brought him to the attention of Sheikh Kamal Adham ("Adham"). Adham had been an advisor to, and was a relative of, King Faisal. Adham came to work for the King's son, Prince Turki, who served as chief of the Foreign Liaison Bureau and Chief of Intelligence. Adham recruited Khalil to work in the Foreign Liaison Bureau as Adham's personal assistant, gathering and analyzing news media articles from other countries regarding Saudi Arabia.[10] Khalil also started his

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[9] The CD-ROM format is indexed by deposition pages and lines, allowing the viewer to quickly find a desired portion of testimony. In addition, the presentation uses a split screen, displaying the video portion on the left and the transcript on the right. The Court was able to see and hear Khalil's testimony, judge his demeanor, and, on occasion, refer to the transcript on the screen when Khalil's English pronunciation was immediately intelligible.

[10] The complaint alleges that Adham was Chief of Intelligence and that Khalil was his deputy. Some evidence and argument supports this allegation. *See, e.g.*, Jawhary Dep. *(BCCI)* at 191 ("Mr. Khalil is a security man, not an accountant, . . . "); *see also* Tr. at 21 (Mr. Linn's opening argument). Because the exact nature of Khalil's role in the Foreign Liaison Bureau is immaterial to this dispute, the Court leaves the issue open.

own communications company designing satellite communications systems for the government of Saudi Arabia while working at the Foreign Liaison Bureau. Khalil worked in the Saudi Government with Adham for 16 years.

Another close associate of Adham and Khalil was Sayed Jawhary ("Jawhary").[11] Jawhary is a resident of Saudi Arabia, who has worked for Adham as a financial advisor since 1957. At relevant times, Jawhary also provided financial advice to BCCI, for which he was well compensated. Jawhary did not disclose the existence or terms of this side arrangement to either Adham or Khalil.

Adham, Khalil, and Jawhary had a number of business dealings in common. On occasion, Khalil undertook real estate transactions on Adham's behalf. The three kept each other apprised of investment opportunities. It was Adham who suggested to Khalil that he deposit money with BCCI. Also at Adham's invitation, Adham, Khalil and Jawhary became record shareholders of Credit and Commerce American Holdings, N.V. ("CCAH"), the ultimate parent corporation of First American Bank.[12] First American

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[11] Subsequent to many of the relevant events, Jawhary changed the English spelling of his name. In many documents he is referred to as "E. E. Eljawhary." or as "Mr. Gohary."

[12] CCAH is a Netherlands Antilles Corporation, which was a bank holding company pursuant to the Bank Holding Company Act, 12 U.S.C. § 1841 *et seq*. Credit and Commerce American Investment B.V. ("CCAI") is a Netherlands corporation and was a wholly-owned subsidiary of CCAH. CCAI was also a bank holding company pursuant to the Bank Holding Company Act. CCAH and CCAI were formed in 1978 to acquire control and ownership of Financial General Bankshares Inc. ("FGB"), a Virginia corporation and a bank holding company within the meaning of the Bank Holding Company Act. The acquisition was completed in 1982 when CCAI acquired First American Corporation ("FAC"), a Virginia corporation, which in turn acquired FGB, which was subsequently renamed First American Bankshares, Inc. ("FAB").

operated in multiple states in the United States, with its principal place of business being the District of Columbia.

G. Capcom

Khalil, through Akbar, invited Adham and Jawhary to become record shareholders in defendant Capcom UK, a United Kingdom corporation incorporated in 1984 which was at all relevant times a broker-dealer in futures, options and commodities. In addition to being a shareholder, Khalil also was a director of Capcom UK.

Capcom UK formed a subsidiary in the United States, Capcom US, to trade on the Chicago Board of Trade. Capcom US is an Illinois corporation incorporated in 1985, which was at all relevant times a broker-dealer in futures, options and commodities. At relevant times, defendant Capcom UK was the registered owner of 82 percent of the shares of Capcom US. Capcom UK also formed another wholly-owned subsidiary, Brenchase Limited, which was incorporated in the United Kingdom.

After the collapse of BCCI, Adham and Jawhary pled guilty to charges brought by the United States and the State of New York for their respective roles as nominee shareholders in BCCI's acquisition of First American. In lieu of incarceration, Adham agreed to pay a fine of $105 million and Adham and Jawhary agreed to cooperate with law enforcement authorities in their investigations of BCCI's collapse.

H. The BCCI Liquidators

On July 5, 1991, banking regulators in the United Kingdom, Luxembourg, and the United States froze assets owned or controlled by BCCI Holdings, BCCI SA, BCCI Overseas, and ICIC Overseas. By the end of July 1991,

officials in 44 countries had closed down BCCI branches and operations in their jurisdictions.[13] Commencing in January 1992, the various plaintiff companies were placed into full liquidation and the Court Appointed Fiduciaries were appointed. BCCI Holdings was placed into liquidation in June 1992. ICIC Overseas was placed into liquidation in April 1992 and ICIC Holdings was placed into liquidation in July 1993.[14]

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[13] On or about July 5, 1991 in England, the Secretary of State for Trade and Industry appointed provisional liquidators over the United Kingdom branches of BCCI SA, subject to the supervision of the High Court of Justice in England. On or about July 8, 1991, in Luxembourg, at the petition of the Institute Monetaire Luxembourgeois ("IML"), the Luxembourg court placed BCCI S.A. into "gestion controllee" (controlled management) and appointed a commissaire (commissioner). On or about July 22, 1991 in the Cayman Islands, the Grand Court of the Cayman Islands appointed provisional liquidators over BCCI Overseas and certain Cayman entities, including ICIC Overseas and ICIC Holdings. On or about August 1, 1991, in Luxembourg, at the petition of the IML, the Luxembourg court also placed BCCI Holdings into "gestion controllee" and appointed commissaires. Provisional liquidation and "gestion controllee" are interim insolvency procedures that enable the assets of an entity to be protected pending the hearing of the application to wind up or liquidate the company.

[14] The liquidations of the plaintiff corporations are closely interrelated. A Board of Liquidators, consisting of the Liquidators appointed by the Courts in England, the Cayman Islands, and Luxembourg, coordinates global asset recovery efforts. The activities of the Board of Liquidators are conducted pursuant to various agreements, including pooling agreements, which provide for the pooling of assets of the BCCI Group and the ICIC entities to ensure that all admitted creditors of any BCCI Group or ICIC entity receive an equal pro rata dividend.

The liquidation structure, which is implemented pursuant to the supervision and authority of the appointing courts, reflects the interrelationship of the various BCCI Group entities. Throughout its existence, the BCCI Group operated under the overall management and

In denying Khalil's motion to dismiss, this Court recognized the validity of the Liquidators' appointments and their powers to act on behalf of the plaintiff corporations in this case. *See Khalil,* 20 F. Supp.2d at 4-5. For the reasons previously cited, and for those advanced by the Liquidators at trial, the Court holds that the Liquidators have standing to bring this action.

I. Additional Witnesses

The Court also received deposition testimony from a number of former officers, directors, or employees of Capcom. Khalil also presented deposition testimony from prosecutors in the United Kingdom concerning their opinion of Khalil's and Akbar's relative culpability.

The Court also received live testimony from Christopher Morris, one of the English Liquidators; John Gilkes, an English forensic accountant assisting the Liquidators; Dr. Audrey Giles, the Liquidators' expert in forensic document examination; Richard Small, Assistant Director of Banking Supervision and Regulation for the Board of Governors of the Federal Reserve System; and Irving Beimler, the Liquidators' expert in credit and lending.

J. Documentary Evidence

To prove their case, the Liquidators relied at trial on BCCI's records documenting Khalil's relationship with the bank. Although the corrupt former management of BCCI used the bank to carry out fraudulent schemes from an early point in its history, in many other respects BCCI operated as a normal business. Account ledgers were maintained. Deposits, withdrawals, wire transfers, and other transactions were documented in the normal course of business. The BCCI

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authority of a single group of senior officers with common boards of directors and centralized operations.

Group followed industry custom in its numerous dealings with banks in the United States and around the world. Large, prestigious accounting firms audited the records of the various BCCI entities, and certified to the public for many years that all was above board. Indeed, among other reasons, it is because BCCI operated as a normal business in so many respects that it took banking regulators around the world so long to discover the massive fraud that was masked by the surface normalcy.

Some of BCCI's records concerning Khalil, and Khalil-owned companies, document real transactions as they occurred. The parties agree that many other BCCI records concerning Khalil evidence sham transactions. It appears that the former management of BCCI relied primarily on use of Khalil's name and the names of Khalil-owned companies to disguise fraudulent transactions in the Treasury Division. On documents reflecting false transactions, and occasionally on those reflecting real transactions, Khalil's name was often signed by Akbar or another BCCI employee. At trial Khalil objected on authenticity grounds to most of the Liquidators' exhibits. The Court admitted the exhibits into evidence provisionally on condition that the Liquidators lay a foundation for their admission. That was done.

To distinguish appearances from economic reality, the Liquidators relied on two experts. Dr. Audrey Giles ("Giles") testified as to which signatures on key documents appeared to be Khalil's genuine signature. Khalil did not offer a competing expert, and the Court finds Dr. Giles' testimony to be credible and unrebutted.[15] The Court finds that all of the

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[15] In essence, Khalil testified as his own opinion witness as to handwriting. On repeated occasions, when Khalil was asked whether or not he had signed a document, he either soliloquized on a different topic, or asked to see the original signature to decide how closely it resembled his signature. Only in rare instances would he testify as to whether he

signatures Dr. Giles testified to have been more likely Khalil's than not, were in fact Khalil's signatures. The Liquidators also relied on John Gilkes ("Gilkes"), who sifted through numerous documents recovered from BCCI and checked these against available outside sources to separate fact from fiction in the story told by the BCCI documents.

II. KHALIL'S DEPOSIT RELATIONSHIP WITH BCCI

In or about 1975, Sheik Adham told Khalil he had a "very good bank" in England, and suggested to Khalil that he put his money in BCCI because the real estate market in Saudi Arabia was "quiet." Khalil's practice up to that point, like many living in Saudi Arabia, had been to keep his substantial wealth in cash, primarily in Saudi currency, locked in a strong room inside his house. Khalil testified that one reason that Saudis generally do not use banks is that the Koran places restrictions on followers of Islam from keeping interest earned on deposits. In any event, in or about 1977, Khalil began his banking relationship with BCCI. While in London, Khalil signed account opening forms, but did not deposit any funds at that time. Approximately three weeks later, representatives of BCCI came to Khalil's house in Jeddah to collect the first deposit.

The details of how much Khalil deposited with BCCI are of critical importance. The Liquidators alleged that Khalil took from BCCI far more than that to which he was entitled. Khalil countered that his relationship with BCCI was economically detrimental, and that money he admits receiving from BCCI—nearly $100 million in deposits and

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remembered seeing and/or signing the document. With respect to signatures that he claimed were forgeries, Khalil gave names to the different styles that he identified. *See, e.g.*, Khalil Dep. *(BCCI)* at 664 (classifying allegedly forged signatures as "face, flying alone, flying with underline . . . copying black ink . . black ink with dash . . . and flying face").

$27.5 million in direct payments-was due and owing to him. At the root of this dispute is a disagreement over the amount Khalil initially placed with BCCI and where it was kept.

On this important point, Khalil's recollection of the details changed between his deposition in the *First American* case and his deposition in this case. In this case, Khalil testified that a representative of BCCI who worked in Adham's office in Jeddah came to pick up his first deposit:

Q: So you give a gentleman from the representative office in Jeddah?

A: Yes.

Q: 10 suitcases?

A: 10 suitcases.

Q: Saudi riyal cash?

A: 50 million more or less, total.

Q: Did you count the money before you put it in the suitcases?

A: It is there. Always when I sell something I take money from the people so I do accounting. I have three different suitcase. If this is the big—

THE INTERPRETER: 150 notes.

A: If this big one, you know, you don't have big size, maybe you can put $10 million, maybe 50 maybe I can put 7 million. Maybe if it's smaller I put five million in the suitcase, because it takes size like that. So I already count it. It is there. He's been most of the day counting the money there.

Q: Were you with him when he counted the money?

A: Oh, yes, oh, yes.

Khalil Dep. *(BCCI)*, Nov. 16, 1998, at 22-23.[16]

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[16] This quotation, and all others herein, are verbatim from the transcripts. Spelling, grammatical, and syntactical errors are as presented in the transcripts.

In his *First American* deposition, taken 18 months earlier, Khalil had testified that it was Akbar who came to take the first deposit, that the money was not pre-packed, but put into Samsonite suitcases in Akbar's presence, that there were 11 suitcases instead of 10, and that he would have deposited more, but he ran out of suitcases. *E.g.*, Khalil Dep. *(FAC)*, June 4, 1997, at 11, 28, 41, 44-48, 69-70, 73-76. Khalil testified that he made one or two comparably large deposits via suitcase, along with periodic deposits in smaller amounts. *E.g.*, Khalil Dep. *(BCCI)* at 100-01. There are some discrepancies between his two depositions regarding these additional deposits.

In other respects, Khalil's testimony concerning his deposits was largely the same in both depositions. For example, Khalil testified that although all the cash deposited came from money in his house, some of it belonged to partners whose identity he could not reveal. *See, e.g.*, Khalil Dep. *(BCCI)*, Nov. 16, 1998, at 30-33. Khalil stated that money placed in term deposit accounts was jointly owned by these unnamed partners, and that money placed in current accounts belonged solely to Khalil. Whether these partners in fact existed is immaterial because in any event Khalil had sole authority to transact business with these funds.

Also, in both depositions Khalil testified that his first deposit was to be divided to pay for BCCI shares he had agreed to purchase, to be placed in term deposits (a.k.a. deposit accounts), and a substantial sum to be placed "in the hand" of Akbar, which would be immediately available to pay expenses as Khalil may from time to time direct.

At trial, Khalil acknowledged through his counsel that the BCCI documents reflecting the total amounts deposited by Khalil show his deposits falling far short of the amount Khalil withdrew and received from BCCI. Khalil's first line of defense was that the Court should disregard those records as

being fabricated, falsified, and incomplete. Along these lines, Khalil asserted that he had deposited more with BCCI than the records reflect. The only evidence offered to support this assertion was his own testimony.

The Court cannot agree with Khalil's assertion. It is telling that Khalil's counsel, when offering Khalil's version of how much he placed with the bank, was forced to argue from stray recollections by Naqvi and Akbar, *e.g.*, Khalil's Prop. Findings ¶ 13, because Khalil—who well remembered sums involved in real estate transactions more than 20 years past—testified as to having only a vague recollection and no independent records to establish that he had placed more with BCCI than is shown in the records on which plaintiffs rely.

The Court finds that at the time Khalil handed over suitcases of cash, he received a receipt. *See* Khalil Dep. *(FAC)*, June 4, 1997, at 69-70. The Court also finds that Khalil kept his own record of the amount deposited. Before the money was turned over, it was counted in a day-long exercise. Even if there had been no receipt, Khalil knew precisely how much he had placed with BCCI. That amount was reflected on the account statements Khalil received from BCCI, which he closely monitored. Although on certain occasions, Khalil complained that the amount he had deposited, or the amount of interest credited to his account, was not accurately reflected, the statements were adjusted at or near the time Khalil made such complaints.

When Khalil withdrew his deposits from BCCI, he presented his account statements to Naqvi. Naqvi suspected that the account statements, which had been prepared at Akbar's direction, *overstated* the amount Khalil had with the bank, but Naqvi was in no position to argue with Khalil. *See* Naqvi Dep., Mar. 27, 1998, at 74-76; Tr. (Akbar) at 456-58. Instead, Naqvi directed that Khalil receive the amount reflected on the account statements Khalil had presented to

Naqvi. There was no unaccounted-for surplus. *See also* Tr. (Akbar) at 470.

Realizing the Court may find that many of the BCCI documents bear sufficient indicia of reliability to be both admissible and entitled to evidentiary weight—as has been done here—Khalil's fall back defense was that even if the Liquidators' numbers were accurate, those figures do not account for the fund Khalil placed "in the hand" of Akbar, which, according to Khalil's counsel, was a sizable fund kept outside BCCI.

Khalil's testimony was quite inconsistent on this critical point. On a few occasions, Khalil presented testimony suggesting that the money in Akbar's hand was kept outside BCCI. For example, when asked about a document he penned:

> Q: . . . . Does that refresh your recollection, sir, that in fact you had current accounts at BCCI?
> A: Just a moment. I don't have current account.[17] I have money with Mr. Akbar. And this is now he's not putting—because he's not putting the money in the BCCI. He's putting the money outside the BCCI . . . .

Khalil Dep. *(BCCI)* at 212; *see also id.* at 214 ("[T]his is my money with Mr. Akbar putting in another bank.").

However, on closer inspection, this issue was a red herring. Most portions of Khalil's testimony demonstrate that he knew the money "in Akbar's hand" was kept in BCCI current accounts.[18] For example:

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[17] *But see* Khalil Dep. *(FAC)* at 26 ("The difference in the money, I don't remember how much at that time to my account, my current account, no problem.").

[18] Most of Khalil's testimony concerning the funds in Akbar's hand sought to differentiate those funds from the funds in the deposit accounts. According to Khalil, the funds in the deposit accounts were pooled funds

> Q: . . . . Now, the first time that you put money in the bank somebody came to your home, collected suitcases and put all that money in deposit accounts at BCCI?
>
> A: . . . . They do like this. They put little deposit. They pay for the shares of the BCCI. They open account from the money in the hand of Mr. Akbar, okay. Because he needs to pay the expenses.

Khalil Dep. *(BCCI)* at 52.

* * * * *

Q: What did [Akbar] do with that money?
A: Which money?
Q: The money that he came and took?
A: He took it to the bank. He took it and he divide it, some in the deposit, some in his hand.

Id at 54.[19]

Not only did Khalil testify that all of his money was deposited in BCCI, but he also did not introduce any records of his own, or from any bank other than BCCI, showing that

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belonging to him and his partners, and it was important that Akbar not "break the deposit" (i.e. pay a penalty for early withdrawal) when paying Khalil's expenses. According to Khalil, the money in Akbar's hand belonged to Khalil alone, and was to be kept liquid so that Khalil could call upon it at a moment's notice.

[19] *See also id.* at 41 ("The only money have in whole world in two places, my house and BCCI."); *id.* at 410 ("Oh yeah, I don't have money except with BCCI."); *id.* at 593 ("[W]hen [Akbar] start at the beginning, when he took the money, he opened I think a — from my money in one of the branches for expenses . . . ."); *see also id.* at 170 (acknowledging that a $915,000 debit to one of his genuine current accounts with BCCI reflected a jewelry purchase taken from money in Akbar's hand); *id.* at 590 ("I have all something nearly again 50 million Saudi riyals, far away from any deposit account, from we call it current account, it means pay 2 million today, until tomorrow, put 3 million, 5 million, just like that, because I don't like to break the deposit account.").

the money "in the hand" of Akbar was kept outside BCCI. It also is highly improbable that Khalil would have entrusted Akbar with funds to be kept somewhere other than BCCI when Khalil was hardly acquainted with Akbar at the time he made his first deposit with BCCI. On the contrary, Khalil understood that BCCI was his agent and that Akbar worked for BCCI, at least as to funds in his deposit and current accounts. *See* Khalil Dep. *(BCCI)* at 80.

On balance, the Court finds that Khalil's references to money "in the hand" of Akbar refer to funds kept in current accounts at BCCI. The memorandum accounts kept by Akbar at BCCI accurately tracked Khalil's actual deposits with BCCI. There was no fund kept outside BCCI.

III. KHALIL'S NOMINEE OWNERSHIP OF BCCI SHARES

The Court also cannot credit Khalil's testimony that he actually paid for any of the BCCI shares registered in his name. BCCI shares were not publicly traded, they were sold through private placements on an invitation-only basis. In the late 1970s, Abedi sought new shareholders in BCCI to finance the bank's expansion. Abedi approached his friend Adham to help recruit investors. Adham presented the "investment" opportunity to Khalil, who agreed in principle to invest.

Abedi sought genuine capital infusions, but he also needed some investors to act as nominee purchasers of BCCI shares. Abedi wanted to give the appearance of new capital being placed with BCCI without diluting his control. Abedi envisioned that ultimately only a large institutional investor would be able to provide for BCCI's continued viability. Naqvi explained the "special arrangements" that BCCI offered to prospective shareholders such as Khalil until such time as an institutional investor could be found:

> Mr. Abedi wanted to make sure that a significant percentage of the shares is held by such holders who would be willing to sell those shares or transfer those shares to this new structure, whenever it takes place.
>
> So he wanted to have special arrangements with some of the shareholders to ensure that a good sized block of shares remain available to him for the purpose of this restructuring. And in one of those reviews, Mr. Abedi asked me [Naqvi] that if we will find out from Mr. Raouf Khalil whether he will hold part of his-part of the shares in his name under an arrangement which is like this nominee arrangement you have described.

Naqvi Dep. at 19. Naqvi deputized Akbar to discuss the nominee proposal with Khalil. Khalil knowingly agreed to serve, and did serve, as a nominee in conspiracy with senior officers of BCCI to act as a registered shareholder of BCCI Holdings.

The Court finds that when Khalil first deposited money with BCCI, Khalil had an understanding with Adham that some of his funds would be used to purchase BCCI Holdings shares. However, the Court infers from the evidence that shortly thereafter, Akbar approached Khalil with the nominee proposal. Khalil, Akbar, and Abedi reached an agreement by which BCCI would advance Khalil loans on a non-recourse basis to finance the purchase of those BCCI Holdings shares that Khalil was to own beneficially and, in addition, Khalil would allow BCCI to "purchase" additional shares in his name in which he would have no beneficial interest. This agreement was entered into before any of Khalil's genuine accounts had been debited for the purchase of BCCI Holdings shares. At no time were Khalil's funds used for the purchase of the BCCI Holdings shares owned beneficially by Khalil.

Although shares were accounted for in BCCI's books as either "beneficially" owned by Khalil or nominee shares,

BCCI funded all of the share purchases in Khalil's name and Khalil had no commercial risk with respect to any of the shares. Naqvi subsequently learned of this new financing arrangement and accepted it as consistent with his and Abedi's overall agreement with Khalil. At no time did Khalil repay the loans taken in his name to pay for his beneficial BCCI Holdings shares.

Khalil became a record shareholder of BCCI Holdings in 1979. Senior management made its first designated nominee purchase of BCCI Holdings shares in Khalil's name in June 1980. Thereafter, periodically during the 1980s, BCCI management purchased additional shares in Khalil's name. Imam recorded some of these as "beneficial" shares and others as nominee shares. In or around May 1985, Khalil and Akbar each signed a schedule which listed the "beneficial" and nominee purchases, and the loans taken out against each portion. *See* Naqvi Dep. 27-33 & Pls.' Ex. 1489; Tr. (Giles) at 62-64; Pls.' Ex. 1489A.

Shares were purchased in the name of Khalil on the following occasions in the following amounts:

Date	# of Shares	Share Price	Principal Cost
Oct. 1, 1979	20,000.0	$125.00	$ 2,500,000
Dec. 21, 1979	4,000.0	$125.00	$ 500,000
June 27, 1980	40,000.0	$125.00	$ 5,000,000
Dec. 29, 1980	10,315.8	$125.00	$1,289,475
Dec. 31, 1981	10,526.3	$200.00	$2,105,260
Dec. 31, 1981	6,666.6	$200.00	$1,333,320
Dec. 29, 1982	21,054.0	$40.00	$842,160
Dec. 29, 1982	13,334.0	$40.00	$ 533,360
Dec. 27, 1984	34,386.0	$40.00	$1,375,440
Dec. 27, 1985	51,579.0	$40.00	$2,063,160
April 14, 1989	57,748.0	$40.00	$2,309,920
TOTAL			$19,852,095

To make these purchases appear real, senior management of BCCI created loans from BCCI Group companies for both the "beneficial" and nominee share purchases. The accounting for these share purchases as loans was false. These were paper transactions, backed by transfers of funds from one part of the BCCI Group to another. To effect the share purchases, funds were transferred by wire from accounts in the Cayman Islands to accounts in the United States, and were then transferred to accounts in Luxembourg. The Court credits Gilkes' testimony demonstrating that these transfers were accomplished using wire transfer facilities in the United States. In addition, instructions related to the transfers were sent by wire and United States mail.

Khalil incurred no genuine, collectible debt in relation to the "loans" used to finance his share purchases, and BCCI obtained no genuine, collectible right to payment on the "loans" created to finance these share purchases. With respect to the nominee shares, Khalil had no obligation to repay the loans. With respect to the beneficial shares, BCCI could not collect on the loans financing those shares, but Khalil agreed that the profit he would take from the proceeds of any sale of such shares would be only the difference between the share price and the loan amounts as to those beneficial shares. However, if at the time of sale the share price was less than the outstanding loan amount, Khalil would not be obliged to repay the difference.

Khalil signed documents which gave all rights over both the "beneficial" and nominee shares to ICIC, and which applied the proceeds of any sale to pay off the outstanding loans. Khalil also signed transfer deeds in blank.

The effect of Khalil's service as a nominee was to inflate falsely the share capital of BCCI. By agreeing to act as a nominee, Khalil understood that he was enabling BCCI to misrepresent to regulators, auditors and prospective

depositors that BCCI Holdings had support through the investment of share capital by a wealthy investor when in fact that investment had not been made and the share capital, which supported the banking activity of the group, was in fact fictitious. BCCI records gave the appearance that Khalil had borrowed $19,852,095 from BCCI to purchase his BCCI Holdings shares.

IV. TRANSACTIONS DONE IN KHALIL'S NAME

Shortly after Khalil agreed to hold BCCI Holdings shares as a nominee, his agreement with BCCI management expanded. Abedi still sought new sources of capital to fund the bank's expansion. One potential source of income was to increase the bank's trading operations. New financial instruments, certain kinds of futures and options, had been introduced into the London markets. Akbar, as a senior officer in BCCI's Treasury operations had become the bank's lead trader. From the evidence, the Court infers that Akbar had met with early success in the markets, and he was eager to manage a larger pool of funds for trading purposes. He also was eager to share in some of the returns he was providing to the bank.

Akbar proposed that BCCI management approach certain customers. As Naqvi testified, "the basic arrangement was that . . . the customers may be asked to permit the bank to trade in their name, the bank will provide all the funds, and the bank will take all the risks." Naqvi Dep. at 36. With Naqvi and Abedi's authorization, Akbar approached Khalil to discuss this proposal.

The Court finds that Akbar did approach Khalil, but with two proposals. The first was the nominee arrangement outlined in Naqvi's testimony. The second proposal was Akbar's own. He proposed that he and Khalil form a partnership to invest the funds in Khalil's current accounts, the funds put in his hand, in commodities, futures, and

options. With great assurance, Akbar promised Khalil returns ranging from double to triple the interest that he could earn from BCCI. Khalil was interested in both arrangements, but he did not want to assume any of the risk.

A. The Khalil-Akbar Partnership

As to the Akbar-Khalil partnership, each agreed that Akbar could trade with Khalil's funds, profits would be split evenly between the two of them, and Khalil's capital would be guaranteed. Khalil was attracted to Akbar's entrepreneurial energy but recognized the risks of allowing him too free a rein. Shortly after he had agreed to both the Treasury nominee arrangement and the Khalil-Akbar partnership, Khalil consulted with Abedi and Naqvi concerning Akbar's trustworthiness. They told Khalil to trust Akbar "more than the bank." And, as it turned out, he did. The Khalil-Akbar partnership became incorporated as Capcom UK in 1984. As will be seen, Akbar, with Khalil's knowledge and agreement, siphoned virtually all the start-up capital from BCCI, and Akbar managed Capcom UK's affairs from behind the scenes until 1987.

Akbar did not fully disclose the terms of the Khalil-Akbar partnership to Naqvi and Abedi.[20] Akbar was a schemer on par with Abedi himself. Akbar sensed that down the line Khalil could be a willing patron to finance Akbar's grander schemes. To disguise the extent of the profits he had earned with Khalil's funds, Akbar told Naqvi that Khalil was demanding an increase in his fee for acting as a nominee for the Treasury trading. Naqvi agreed that Akbar should pay Khalil off. *See* Naqvi Dep. at 55.

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[20] When Khalil mentioned the "partnership" to Naqvi, Naqvi understood it to refer only to the nominee arrangement for BCCI Treasury, but Khalil's remark covered both agreements. *See* Naqvi Dep. at 37, 39.

The Liquidators sought to show that a total of $1,261,968, divided into three payments, was deposited in Khalil's accounts in 1980 and 1981 as a pay-off. However, Gilkes was only able to document that two of the three payments were made, and he referred to no documents showing that these funds had come from BCCI assets. In the absence of such evidence, the Court finds that the $1.2 million Khalil received actually came from trading profits. *See* Tr. (Akbar) at 496-97.

B. The Treasury Nominee Scheme

As to the BCCI Treasury proposal, Khalil agreed to, and did, serve as a nominee for transactions undertaken by the BCCI Treasury Division. Naqvi and Abedi guaranteed that Khalil's deposits would not bc at risk. Khalil and Akbar agreed that as to BCCI Treasury trading done in the name of Khalil or Khalil-owned companies, Khalil would receive approximately one percent of the total amount invested in his name as a nominee fee. Naqvi and Abedi later ratified this agreement.

C. Khalil-Owned Companies and Unreimbursed Expense Outlays

A number of the fraudulent transactions undertaken by Treasury were done either in Khalil's name or in the name of a company owned by him. Capcom UK was the formal incorporation of the Khalil-Akbar parternship. Additional companies, wholly owned by Khalil, came into being as a tax vehicle for Khalil to purchase real property. For example, not long after Khalil began his banking relationship with BCCI, he decided to purchase a home in London known as Moncorvo Close. As part of what Khalil termed the "VIP service" offered to important customers of the bank, BCCI assisted Khalil in the purchase by providing a lawyer to handle the closing and an inspection company to inspect the premises.

In addition, Akbar arranged transportation to and from the airport, made hotel reservations for Khalil and his family, and paid Khalil's staff and utility bills for the new residence. At Khalil's direction, Akbar had furnished and decorated Moncorvo Close so that the house would be inhabitable when Khalil and his family arrived.[21]

There is no dispute that Khalil authorized Akbar to set up an offshore company, Maram Trading Company ("Maram"), to hold title to Moncorvo Close for tax purposes. Maram was a Cayman Islands corporation owned by Khalil and named for his daughter.

Khalil subsequently purchased three other homes in the same manner. Another company, Khalil Investment and Trading Company, a Panamanian corporation, was incorporated by Akbar at the request of Khalil. Of the three additional homes, Sunningdale in Berkshire, England and Lakeside Village in Rockwall, Texas, were purchased in the name of Khalil Investment and Trading Co. *(Id.* at 46, 69, 71, 292, 295). Seadunes, a home in New Smyrna Beach, Florida, was purchased in the name of Maram Trading Company. Khalil also acquired an interest in a property called Potato Patch in Vail, Colorado. For that acquisition he used a company, owned by him, called KINTRA Universal Company, Limited.

As to his first acquisition, Moncorvo Close, Khalil paid the bulk of the actual purchase price from his own funds. However, as part of the "VIP service" for acting as a

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[21] Akbar, not familiar with Khalil's affinity for things of exquisite beauty and expense, spent very modest sums on the furnishings. Upon arrival, Khalil was aghast, but he said nothing to Akbar. Within the next few days, after a trip to Harrods and elsewhere, Khalil redecorated. The record is not clear as to whether the costs of redecorating were reflected on the credit card bills paid for by BCCI.

nominee, BCCI paid a small portion of the purchase price and the ancillary expenses. As Khalil's leverage over the bank increased, BCCI came to pay nearly all costs related to the subsequent transactions. *See generally* Tr. (Gilkes) at 214-28 & exhibits referenced therein. In all, BCCI advanced $2,249,352 of its own funds in connection with these property transactions as payment to Khalil for his services as a nominee. Khalil did not repay this sum because he had no obligation to repay.

Building on these real estate transactions in which Khalil had a beneficial interest, BCCI Treasury also used companies nominally owned by Khalil to purchase properties from BCCI at inflated prices. For example, in 1981, BCCI sold a Hong Kong property it had acquired on December 15th for $1,833,890 to a company nominally owned by Khalil for $3,962,580. The resulting $2.1 million was recorded as a profit in BCCI's 1981 year-end books. These transactions were accomplished through the use of international and United States wire facilities.

D. Commodities Trading

As is the case with most gamblers, Akbar's lucky streak in the markets ran out. In 1983, at Akbar's direction, BCCI's Treasury division acquired significant positions in silver and copper on the belief that prices of the metals would continue to rise. In fact, prices dropped, and BCCI was forced to take delivery of significant amounts of metal at above-market prices. Under normal business practices, if BCCI had been holding this metal at the end of the year, or had sold it at market price during the year, it would have recorded tremendous losses. Doing so would have shaken the confidence of the bank's real investors and almost certainly would have invited increased regulatory scrutiny that would have led to the bank's closure.

Rather than record these losses, BCCI transferred the silver at above-market prices to two entities, Euro Commodities Limited and Notan Trading, which were controlled by Akbar and wholly-funded from BCCI's Khalil-related nominee accounts. Although all of the funds for these "purchases" came from internal BCCI sources, the transactions were recorded as sales. Consequently, at the close of 1983, BCCI's books showed a much smaller loss than the bank had actually suffered.

E. Circular Transactions

In addition, Gilkes testified as to how the BCCI Treasury division carried out a number of other fraudulent transactions done in the name of Khalil, or one of his companies. One type of transaction was a circular routing. transaction done to disguise the fact that BCCI was servicing many of its own loans, giving the appearance that non-performing loans were viable assets. As an example:

(1) On June 26, 1985, BCCI created two loans on its books and transferred a total of $82 million to Capcom UK's subsidiary, Brenchase, by means of two U.S. dollar checks;

(2) that same day Brenchase placed the money with its parent company Capcom UK;

(3) the next day, June 27, the $82 million plus interest was returned by Capcom UK to Brenchase;

(4) Brenchase then divided the money into two parts: $42 million was sent back to Capcom UK by U.S. dollar check, which then paid the money to BCCI, thus giving the appearance that non-BCCI finds were coming into the bank;

(5) the $40 million which remained at Brenchase was then transferred by international and United States wire to BCCI;

(6) the $42 million sent from Capcom UK to BCCI was used to service an account at BCCI that had been previously used to forward money to Capcom UK that was never repaid;

(7) the $40 million that was transferred from Brenchase to BCCI was used to create that false impression that substantial commercial loans were performing when they were not.

See Tr. (Gilkes) at 286-88; Pls.' Exs. 1514-22, 2409-11, 2429-30, 2436-39, 2444-45 BCCI engaged in similar circular routing transactions with the Bank of India and the State Bank of India. Each such transaction had the effect of hiding non-performing assets and creating false profits on the books of BCCI. *See* Tr. (Gilkes) at 289-96; Pls.' Exs. 17-18.

F. Akbar's Authority

A great deal of testimony was devoted to whether Khalil had authorized Akbar to undertake any of these activities, and if so, the extent of that authority. Khalil maintained that he gave Akbar only a formal power of attorney in relation to the creation of companies for the purpose of purchasing real property for Khalil's own use and to finalize such purchases. Akbar certainly had apparent authority to transact a far wider range of business in the name of Khalil and Khalil-owned companies, both with BCCI's funds and with Khalil's funds. It may well be that some of the "power of attorney" forms bearing Khalil's name that were introduced into evidence were in fact signed by Akbar. This does not lead to the legal conclusion that these documents were "forged."

On the contrary, the Court finds that in or about 1980 Khalil authorized Akbar, in both his capacity as a BCCI employee and as Khalil's partner, to undertake a broad range of activities in Khalil's name, and in the name of Khalil-owned companies, *see, e.g.*, Jawhary Dep. *(FAC)* at 914-15.

This authority included, but was not limited to, creating BCCI accounts in Khalil's name and the name of his companies in which Khalil had no beneficial interest or obligation, and using such accounts to engage in fraudulent wire and mail transfers, to purchase and sell real property, and to trade in commodities, futures, and options. Akbar was further authorized to sign such documents in Khalil's name as Akbar deemed necessary to carry out these activities.

Akbar kept Khalil apprised of the progress of the overall scheme. Contrary to Khalil's testimony that he could never find Akbar when he needed him, the Court finds that Akbar consulted with Khalil by telephone on a frequent basis. *See* Deposition of Lorna Wisdom at 20-21. However, unlike with his deposits, in which Khalil's own funds were at issue, Khalil willfully and deliberately kept himself ignorant of the details as to how Akbar exercised that authority. *E.g.*, Khalil Dep. (*FAC*) at 5-6, 102-03, 119; Tr. (Akbar) at 462, 489-90, 496. His capital had been guaranteed, and he knew that he would be held harmless if any of the transactions turned out to be to BCCI's detriment. The scale of these transactions increased steadily. *E.g.*, Tr. (Akbar) at 477. Over time, Khalil was paid millions of dollars pursuant to this agreement.

V. First American Share Nominee Arrangements

Khalil also was instrumental in facilitating another aspect of Abedi's grand design. Abedi badly wanted BCCI to provide banking services in the United States. He wanted to tap into the profitability of the United States market, and he believed entry into the United States would allow him to ultimately regularize and legitimize BCCI's operations worldwide. Abedi expected that some day he would allow the bank to come under a respected regulatory authority. He hoped that BCCI could acquire a controlling interest in an American bank and then come to an arrangement with the Federal Reserve.

However, in the late 1970s and early 1980s, Abedi believed that BCCI was not in a position to seek and obtain Federal Reserve approval to purchase a significant interest in an American bank. Consequently, Abedi and Naqvi concocted a nominee scheme to take over what was later named First American Corporation, a regional bank holding company that controlled what was once the largest bank in the Washington, D.C. area. Under the nominee scheme, wealthy individuals from the Middle East would purport to own the shares of CCAH, the shell corporation that became First American's parent. Some of these investors, such as Adham, would beneficially own some shares—often through loans supplied by BCCI—and also own additional shares as a nominee for BCCI.

Sometime in late 1980 or early 1981, Abedi again asked Adham to help recruit investors. Adham again approached Khalil. As part of his agreement to serve as a nominee for BCCI for a variety of purposes, Khalil also agreed to serve as a nominee in the acquisition and maintenance of control of the shares of CCAH. Khalil was one of several nominees who participated in the scheme.

To carry out the scheme, BCCI created CCAH, which wholly owned CCAI, also a shell. CCAI came to own First American Corporation, which, in turn owned First American Bank, which owned the retail banks with whom many residents and businesses in the Washington, D.C. metropolitan area did their banking. Ownership of CCAH meant ownership of First American.

In order for CCAH to gain ownership of First American, approval of the Federal Reserve Board was necessary. In April 1981, some of the proposed owners, including Khalil, flew to Washington, D.C. to testify before the Board. Prior to testifying, Khalil had done no due diligence concerning his "investment." The parties agree that Khalil knew very little

about First American when he appeared at the Federal Reserve hearing:

Khalil's own testimony as to the circumstances of his acquisition of First American shares confirms his nominee status. Financial information on Khalil had previously been supplied to United States regulators through BCCI, although Khalil asserts that he did not know financial information was filed on his behalf. Khalil testified in this case that he knew virtually nothing about the bank he was purporting to acquire an interest in when he appeared in Washington in 1981 . He did not know what percentage of the bank he was acquiring or precisely how much he was supposed to be investing. *See* Khalil Dep. (BCCI) at 379-84, 400, 407, 417. Khalil asserts that he gave Abedi discretion, within a specified range, to decide how much would be invested on his behalf and what percentage would be acquired.

Khalil understood that the CCAH shares BCCI was purchasing in his name were being counted on to form the majority interest in First American, although Khalil testified that he heard it from Adham instead of a BCCI officer. Khalil did not negotiate or discuss a voting trust or some other form of shared control by which "his" shares would be used to consolidate control. Moreover, Khalil knew that this transfer of control required regulatory approval, which is why he flew to Washington.

Khalil flew to Washington with Akbar. On the eve of his Federal Reserve testimony, Khalil met with Clark Clifford and Robert Altman, partners in the law firm of Clifford & Warnke. From the record in this case, it is unclear whom Clifford and Altman represented in their dealings with Khalil. Khalil testified that when he arrived at Clifford & Warnke's offices, he waited while Adham met with Clifford and Altman. Then, Khalil was given a prepared statement to read to the Federal Reserve. Khalil was asked to rehearse the

statement with Clifford, who coached Khalil on his delivery. Khalil read the statement and did not claim that it was inaccurate in any way. Khalil delivered the statement, as prepared, to the Federal Reserve. [22]

On the basis of the testimony of Khalil and the other nominees, along with documentation supplied by BCCI, the Federal Reserve approved the sale of First American. The Federal Reserve was unaware that BCCI would be the beneficial owner of a controlling interest in First American. Had the Federal Reserve known that BCCI was behind the takeover of First American, transfer of control would not have been approved.

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[22] Khalil's telling of these events is more colorful:

> Q: So you get to Washington, and what happens next?
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> A: . . . . When [Adham] finished the meeting he said look, this is—he was minister I think of defense. Now he's the man, he has a lawyer office like this, he's the man who will be responsible for the buyer because regulation, as he said, work like this.
>
> Q: He was talking about Mr. Clifford?
>
> A: Clifford.
>
> Q: He had been meeting with Mr. Clifford?
>
> A: Yeah, too, and Altman inside. After he said this is Altman, that is the son of Mr. Clifford, like that. First word after how do you do everything, how is your English language? I said it's not perfect. That means that somebody told him and he knows me, I am not Shakespeare, but I'm trying to explain whatever I know . . . He said no, we prepared everything for you. Just I would like to read in front of you and Jawhary, please repeat it again tomorrow. And . . . he read, when you have point, stop like. He want me to do it with very prestigious way. I cannot. This is not my way . . . . .
>
> . . . .
>
> Q: Who rehearsed you through this, through your lines, was that Mr.—
>
> A: Mr. Clifford.

Khalil Dep. (BCCI) at 385-87.

The initial transfer of CCAH shares took place in 1982. Khalil tells an improbable tale to explain how he actually purchased his shares. According to Khalil, he authorized Abedi to buy between $5 million and $8 million of CCAH stock. Khalil testified that after the initial purchase, he received a statement from BCCI showing that $14,832,000 had been taken from his accounts to purchase between 4 and 5 percent of CCAH. Khalil testified that he was angry that Abedi had greatly exceeded the authorized amount. However, Khalil did not introduce this bank statement into evidence, nor did any witness who spoke with Khalil at the time testify that Khalil was upset. On the contrary, on the return flight from Washington in April 1981, Khalil acknowledged his nominee status to Akbar. At later times Khalil again acknowledged his nominee status with respect to CCAH shares in his name to both Akbar and Naqvi.

The documentary record also demonstrates that Khalil was a nominee for BCCI. Three blocks of shares were purchased in Khalil's name. There was an initial purchase of 8,240 shares in the tender offer of March 1982, and rights shares purchases of 1,667 shares in August 1982 and 3,343 shares in November 1983, amounting to a total purchase of 13,250 shares registered in Khalil's name. None of the memorandum account statements kept by Akbar that were introduced, nor any of the account statements produced by Khalil, show that any of his deposit or current accounts were debited to pay for any of these purchases. Rather, the documents show that BCCI created false loans from BCCI Group entities to carry out the nominee purchases. The nominees, including Khalil, had no obligation to repay the loans; BCCI's investment was concealed through the nominee lending. The total amount of BCCI's direct investment in the shares of First American through the nominee scheme was $556,108,245.

For the initial purchase, BCCI routed funds for the shares purchased in Khalil's name through the Swiss bank account

of another nominee shareholder, Sayed Jawhary. BCCI created a false $30 million loan to Khalil in BCCI Overseas, Grand Cayman. Those funds were then sent to a false current account in Khalil's name at BCCI, S.A., London. Most of these funds were subsequently transferred by wire from BCCI to United Overseas Bank, Geneva, to the credit of Adham's and Jawhary's actual accounts. The funds sent to United Overseas Bank were then returned by wire to BCCI where they were pooled with funds for other nominees as well as beneficial shareholders and transferred to the ICIC Call Deposit Account, which was the collection account for the First American tender offer at BCCI Overseas. These funds were then remitted by wire to BCCI Overseas' account at Bank of New York and then to First American's account at Chase Manhattan. There was no commercial purpose for such a roundabout routing of funds, which concealed from the auditors and regulators the fact that the BCCI Group had supplied the funds for the purchase of shares in Khalil's and others' names.[23]

Khalil knew that the funds for purchase of the shares in his name had been routed through the Swiss account. Jawhary testified that he told Khalil that Jawhary's Swiss account had been used to route funds and that "Khalil said fine." Jawhary Dep. (*BCCI*) at 12-13.

BCCI management carried out the second and third nominee purchases in Khalil's name in similar fashion. The second purchase of shares in the name of Khalil occurred in August 1982. A loan of $12,060,000 was drawn down in the name of another nominee at BCCI Overseas, Grand Cayman. The funds were transferred from BCCI Overseas by wire to First American's account at Chase Manhattan Bank in New

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[23] As is evident, this routing transaction to conceal the source of funds to purchase Khalil's shares was effected through the use of international and United States wires.

York in August 1982. The transfer included $3,000,600 for shares in the name of Khalil and $9,059,400 for other nominees. Again, United States and international wires were used to effect the transaction. The third purchase of shares in Khalil's name occurred in November 1983. A loan of $6,368,415 was drawn down in the name of Khalil at ICIC Overseas, Grand Cayman, which was aggregated with other loans drawn down at ICIC in the name of other nominees and remitted by wire to First American's account at State Bank of Albany in New York.

In total, $24,201,015 was paid by the BCCI Group to finance nominee shares for Khalil. These transactions were all recorded in BCCI's books as loans. BCCI documented its ownership interest in First American in detail. With immaculate penmanship, Imam tracked on a regular basis BCCI's internal carrying costs on these nominee loans.[24] The accounting for these nominee purchases as loans was false; the financing did not represent genuine and collectible loans made to Khalil, and the purported loans were never repaid by Khalil.

In support of his claim that he was the beneficial owner of his CCAH shares, Khalil testified concerning a 1984 trip he made to Washington, D.C. area, where Khalil's son, Khalid,

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[24] At Naqvi's direction, Imam kept detailed records of CCAH shareholding. Almost all the CCAH shares were purchased with loans from BCCI. Some of these loans were false and were created to disguise BCCI's direct equity investment in First American. Other of these loans were, at least in some respects, real extensions of credit. To distinguish between the two, Imam listed the nominee shareholders as "Group I." This group was not obliged to repay the "loans" advanced for the purchase of their shares. *See* Imam Dep. at 42. By contrast, Group II shareholders were expected to repay their loans. *Id.* at 48-49. Some CCAH shareholders, such as Adham, were listed in both Groups I and II because they held some shares as nominees and other shares beneficially. At all relevant times, Khalil was a Group I shareholder; a nominee.

lived. Khalil entered a First American branch in Falls Church, Virginia and attempted to cash $100,000 in travelers checks. The teller explained that he only had permission to cash up to $3,000, and that authorization from a supervisor would be required. Khalil stated that he was a shareholder of the bank. The branch manager telephoned Altman, who authorized the transaction. *See* Khalil Dep. *(BCCI)* at 352. Within the same week, Khalil visited Altman in his office to hear a report on First American's progress. Khalil testified that during the meeting Altman showed him his CCAH share certificates but told Khalil that the certificates could not be delivered to him for another 18 months.

The evidence does not support this version of events. The Court finds that Khalil did travel to Washington, D.C. in 1984, and that he did meet with Altman. Although Khalil was a nominee owner of First American, he expected First American to extend to him the same "VIP service" he received from BCCI. Khalil sought information concerning First American's success so that he could value his service to BCCI as a nominee. Altman did not have the CCAH share certificates; Imam did. *See* Imam Dep. at 74-75; *cf.* Khalil Dep. *(BCCI)* at 835 (testifying in regard to Capcom share certificates that "if you have the real shares why you give it to other people.").

It was illegal for the BCCI Group to acquire or maintain its beneficial interest in First American without approval by the Federal Reserve. By participating in the nominee scheme, through which BCCI acquired a controlling interest in violation of United States banking laws, Khalil and his co-conspirators subjected BCCI to criminal liability and substantial financial loss.

VI. TERM DEPOSITS

Khalil closely watched BCCI's treatment of his term deposits. He had instructed BCCI to roll over his term

deposits and to find him the best interest rates available. He expected BCCI to provide him with above-market rates. *E.g.*, Khalil Dep. *(BCCI)* at 137, 209-10. Early on he detected problems with his account statements. He found that the interest payments were not as great as expected or not at the agreed-upon rate. In his terms, BCCI staff was "playing with the interest" or doing "monkey business."[25] Although Khalil appears to have been aware of all such discrepancies, he chose to point out only the more egregious to Akbar, who grudgingly had them corrected. *E.g.* , Khalil Dep. *(BCCI)* at 90-91, 197-98. He purported to cancel his previous instructions to Akbar, but in fact, his relations with the bank remained unchanged.

The Court finds this conduct to be further corroboration of Khalil's nominee status. Khalil understood that the BCCI Group needed him more than he needed them, and that by acting as nominee, Khalil had additional leverage over the bank. As a result he expected to receive above-market interest on his genuine deposits, and he expected to receive additional

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[25] According to Khalil, this was a reflection of national character.

> Q: I'm sorry, you were talking about BCCI being run by Pakistanis?
>
> A: Yes. They type of the people that are dealing millions and millions, they're not from rich country, they're from poor country and they are from poor very inside the country. When you put all this liquidity in their hand I think he's not an angel coming from the sky, he's a person. He need to play. I am not concerned about BCCI and the people, no, all we face that in Saudi Arabia. In our banks, in our companies, you see, in our relation with any contract building like this, always like that, always.
>
> Q: Always what?
>
> A: Always they cheat, they play.

Khalil Dep. *(BCCI)* at 215; *see also id.* at 478-79.

payments and profits for his service as a nominee. Had Khalil been only a genuine depositor, he certainly would have withdrawn his money from BCCI rather than tolerate regular discrepancies in his account statements. However, the fact that Akbar and others tried to cheat on their agreement by providing less interest than had been agreed troubled Khalil, but did not cause him to leave the bank. The potential pay-offs of staying outweighed the annoyance of having to monitor Akbar and bring him back into line from time to time.

VII. Growth of Capcom

In the mid-1980s, a number of events transpired that changed Khalil's relationship with BCCI. These began in 1984 and were triggered by Akbar's deteriorating relations with Abedi and Naqvi. Akbar consulted with Naqvi on a daily basis, but Naqvi began to lose trust in Akbar. Naqvi's suspicions were well founded.

The newest development was the founding of Capcom UK (initially named Hourcharm Ltd.) in April 1984. When Khalil and Akbar agreed to start Capcom UK, they agreed to siphon funds from the BCCI Group to capitalize and support the new venture. Khalil testified that he and Akbar, as partners, controlled 67 percent of Capcom UK shares, though that was not reflected in the records of Capcom. Akbar did not become a registered shareholder of Capcom until 1987, but he nevertheless created and controlled the operations of Capcom UK from "behind the curtains." Khalil was a director of Capcom UK and consulted regularly with Akbar concerning the company.

In furtherance of this conspiracy, Akbar—as head of treasury for the BCCI Group—created loans in the books of BCCI in the name of Khalil and Khalil-related companies, including Maram Trading Company. These funds were transferred from BCCI accounts (at times using U.S. bank accounts and using international and United States wire

facilities) to Capcom UK as capital and as trading funds. These funds were converted to the use of Capcom UK and were not repaid to the BCCI Group.

Capcom began trading in September 1984. To the surprise of many in the London trading community, it appeared as if Capcom had become a large presence in the market almost overnight. At Akbar's direction, BCCI used Capcom extensively as a broker. In addition, between October 1984 and December 1984 Akbar caused BCCI to transfer a total of $100 million to Capcom UK. Neither Naqvi nor Abedi authorized these transfers. These funds were initially debited to an overdraft account in the name of Khalil at BCCI Overseas, Grand Cayman. The debits to this account falsely represented that Khalil was liable to repay the amounts advanced. In fact, he was held harmless as to any debits to the account and the accounting for the transfers therefore falsified the books and records of the BCCI Group. The funds were transferred to Capcom by BCCI Overseas using international and United States wire facilities and United States bank accounts. In addition, the transfers were confirmed using international and United States wire facilities and the United States mail. The liability for these transfers was subsequently transferred from the Khalil overdraft account to a loan account in the name of a Khalil-owned company, Maram Trading Company.

Flush with cash, Capcom UK expanded into the growing commodities futures market at the Chicago Board of Trade by incorporating Capcom US in May 1985. Capcom UK was the record shareholder of 82 percent of Capcom US stock. One month later, Akbar caused BCCI to transfer approximately *$25* million to Capcom UK, debiting an account in the name of Maram Trading Company. These funds were transferred to Capcom UK by wire using United States bank accounts and international and United States wire facilities. Akbar disguised the true nature of this transfer by making it appear

as if Paten Holding Company—a Panamanian shell company that Akbar had set up through a Swiss lawyer—had advanced the funds as non-recourse loans to the shareholders of Capcom UK. Khalil executed a loan agreement and memorandum of deposit purportedly evidencing a loan from Paten Holding to him secured by shares in Capcom UK. Jawhary and Adham also executed loan agreements in favor of Paten Holding. When received, the funds were accounted for by Capcom UK as share capital.

VIII. THE $12.5 MILLION PAYMENT TO KHALIL

Around this same period, mid-1985, while Akbar was literally looting the BCCI treasury, Naqvi first became aware of sizable losses Akbar had been incurring in the Treasury operations. Akbar warned Khalil that Akbar's position with the bank had become shaky. Whatever allegiances Akbar may have had for BCCI were quickly evaporating, and Akbar placed a higher premium on his lucrative partnership with Khalil. Khalil understood that many of BCCI's Treasury losses had occurred in connection with accounts in his name. BCCI was scrambling to find a way to disguise these losses from its external auditors. This gave Khalil additional leverage over the bank. At the same time, Khalil had become nervous about the safety of his deposits. Akbar had revealed to Khalil that in addition to the Treasury losses and the large amounts being diverted to Capcom, BCCI also was faced with enormous non-performing loans that had been advanced to the Gokal brothers in India.

Khalil told Akbar that he wanted to close out his accounts at BCCI and that he expected to be paid his share of the "profits" from the trading operations, notwithstanding his knowledge of the serious losses that BCCI's Treasury had experienced. Akbar found himself caught in the middle. His position with BCCI would erode considerably if he did not

have Khalil's accounts to manage. However, it was more important to him to keep Khalil happy.

Akbar approached Naqvi and advised him of Khalil's intention to close his accounts and receive an unspecified amount of "profit." Naqvi recognized the bank's vulnerability. With the losses in Treasury, the additional loss of significant deposits would leave the bank with precarious liquidity. Moreover, as to the issue of Khalil's desire for "profits" from BCCI's trading in Khalil's name, Naqvi explained that "because there was no written agreement with Mr. Khalil of my earlier understanding that the compensation would be about 1 percent of the amount invested, it became an open issue." Naqvi Dep. at 59.

Suspicious of Akbar's divided loyalties, Naqvi nonetheless deputized Akbar to find a way to keep Khalil as a depositor and to settle the "profit" issue. To prevent Khalil from exploiting the uncertainty concerning Khalil's share of trading profits in the future, Akbar was directed to memorialize any settlement agreement with Khalil. Akbar and Khalil negotiated the sum of $12.5 million. By letter from Akbar to Khalil dated August 16, 1985, and countersigned by Khalil, the $12.5 million payment would represent $2.5 million in realized trading profits and $10 million "from the future profits of trading account (50%) ~~and of profits on your BCCI holdings shares (Capital Gain).~~" *See* Pls.' Exs. 1546, 1547. The portion of that line struck out was done so at Khalil's direction. He expressly reserved the issue of payment for his nominee service with respect to BCCI Holdings shares for a separate negotiation.

Akbar had also drafted a line in the letter that read: "For the purpose of trading, I am taking time to time, a loan from the Bank in your name which will be adjusted at the close of the trading business. This is for your information only." It is undisputed that Khalil signed the letter with this line left

intact. Pls.' Ex. 1546. It is further undisputed that during the course of the meeting with Akbar, after signing the letter, Khalil directed that the line referencing loans taken in his name also be struck out. Pls.' Ex. 1547.

Akbar, being a double agent in this negotiation, quickly acquiesced to both edits. When Akbar informed Naqvi of the outcome, Naqvi was staggered by the sum. He testified that he considered the payment to be "extortion," but he felt he had no choice but to ratify the agreement. *See* Naqvi Dep. at 70. On August 20, 1985, BCCI issued a check in the amount of $12,500,000 in favor of Mr. Abdul Raouf Khalil.

Khalil admits that he directed that portions of Akbar's August 16, 1985 letter be crossed out, he admits that he signed the letter, and he admits that he received a check for $12.5 million. Khalil's characterization of this transaction, however, is quite improbable. *See* Khalil Dep. *(BCCI)* at 300-21. For example, Khalil testified that this $12.5 million payment was for the BCCI Holdings shares in his name, notwithstanding his admission that he directed that the reference to BCCI shares be struck out. Even on small points his testimony is internally inconsistent. He did not dispute that his meeting with Akbar occurred on August 16th, the date of the letter. Yet, he testified that he received the check during his meeting with Akbar, even though the check was not issued until August 20th. The Court finds that this $12.5 million was payment to Khalil from BCCI for Khalil's service as an all-purpose nominee.

IX. Khalil Withdraws Most of His Deposits From BCCI

The spring of 1986 was the breaking point on a number of fronts. Akbar made his last raid on the BCCI treasury. Between January and April 1986, funds in the amount of $136 million were transferred from BCCI to Capcom by

United States wire using United States bank accounts. These funds were never returned to BCCI.

At that same time, Naqvi came to appreciate the full extent of the losses in Treasury. Naqvi did not realize that some of these "losses" were funds Akbar had embezzled through Capcom, but it was clear that the bank was hemorrhaging funds at an unsustainable rate. Naqvi knew he had to rein in Akbar without doing so in a way that would lead Akbar to expose the bank's true financial condition to the world. *See* Naqvi Dep. at 179. Instead, Akbar left BCCI on his own accord.

Shortly thereafter, Akbar resurfaced at his own brokerage company, Futures Advisory Services ("FAS"), located down the hall from Capcom UK's offices. Akbar recruited his secretary, Lorna Wisdom, and other BCCI Treasury personnel to join him either at FAS or Capcom. Akbar directed Capcom's affairs from his FAS office. Akbar continued to collect a salary from BCCI until 1987.

Akbar's departure from BCCI spurred Khalil into action. In May 1986, with his partner and account manager out of the bank, and with the bank appearing to be in serious fmancial trouble, Khalil decided to withdraw his deposits from BCCI. Because Akbar was gone, Khalil dealt directly with Naqvi. Naqvi tried, but failed, to persuade Khalil to stay with the bank. Khalil presented Naqvi with his most recent account statements and demanded that nearly all the funds be paid to him; Khalil agreed to keep approximately 10 million Saudi riyals in a BCCI account. Khalil directed that $87 million and £3 million be transferred to Khalil's new accounts at Adham's bank, Allied Arab Bank. *See* Pls.' Ex. 1745. Khalil also raised with Naqvi the issue ofthe BCCI shares in Khalil's name.

Without access to Akbar's records, Naqvi agreed to pay out the amount reflected on the account statements presented by

Khalil. However, to protect against a subsequent approach by Khalil to collect more in the way of deposits, Naqvi drafted language by which Khalil agreed that these payments, along with the instructions concerning the 10 million riyals, represented a full accounting of Khalil's deposits with BCCI. *See* Naqvi Dep. at 82 & Pls.' Ex. 1737.

When Naqvi and Khalil took up the subject of BCCI shares, Khalil was primarily concerned with getting the shares out of his name. Khalil had become concerned about his public association with the bank, whose financial straits were becoming more apparent. Naqvi explained that it would take time. Khalil agreed to allow BCCI to keep the shares in his name for another 18 months. Khalil signed transfer deeds in blank and an agreement with ICIC authorizing the sale of shares in his name at any price ICIC may direct. *See* Pls.' Exs. 43 & 1747.

X. The $15 Million Payment to Khalil/The $17 Million "Loan"

A. $15 Million Payment

The summer of 1987 again brought a flurry of activity. Khalil requested another meeting with Naqvi. They met first on June 25, 1987. In that meeting, Khalil announced that he was withdrawing his remaining deposits and that he expected to receive another substantial payment—a parting gift, as it were—for his service as a nominee. Khalil also wanted assurance that the loan accounts in relation to both the BCCI and CCAH shares in his name would be closed. According to Naqvi, Khalil "was there to explore and exploit the situation at the time of his total separation of relationship with BCCI." Naqvi Dep. at 90. Naqvi elaborated:

> [T]here were so many other parties who were exploiting and blackmailing BCCI that I had become familiar of the manner, the tone, the approach, which underlies an

> extortion claim. And this was the situation which I was facing with Mr. Raouf Khalil the second time, sir.

Id. at 97.

Naqvi inferred, and the Court finds, that Khalil had been briefed by Akbar in preparation for this meeting, and that Akbar conspired with Khalil regarding the amount that Khalil should seek to extract from Naqvi. *See* Naqvi Dep. at 89-92. After some negotiation, Naqvi agreed to make a flat payment of $15 million in full and final settlement of all investments in Khalil's name. Under the agreement, Khalil waived any right to additional profits from the BCCI Holdings shares that had been treated as "beneficial" shares in the books and records of BCCI. Acknowledging Naqvi's request for additional time to transfer both the BCCI and CCAH shares, Khalil agreed that these could be kept in his name for an additional two years. Khalil also agreed to sign audit confirmations to assist Naqvi with the auditors.

A follow-up meeting took place on July 2, 1987 for the purpose of documenting the $15 million agreement. Imam corroborated the timing of the July 1987 meeting and his preparations to assist Naqvi in discussing the loans and investments held in Khalil's name. Documents signed by Naqvi and Khalil during the July 1987 meeting corroborate that the $15 million was a fixed payment in respect of both First American and BCCI Holdings shares held in Khalil's name. Imam prepared the documents relating to the transaction and brought them into the meeting between Naqvi and Khalil. Khalil signed the documents during the meeting and they were returned to Imam shortly thereafter. Dr. Giles authenticated Khalil's signature on these documents.

Khalil signed an instruction letter directing that the $15 million be paid, via New York bank accounts and wires, to his account in the name Tahia Trust at Libra Bank. On July 3,

1987, the $15 million payment was wired from BCCI Overseas, Grand Cayman via bank accounts in New York. Advice of the payment was communicated from New York to Grand Cayman by United States mail. Khalil conceded that payment was made to the account designated in Pls.' Ex. 1891, and that the account was his.

B. $17 Million "Loan"

In the June 1987 meeting, Khalil also addressed a separate issue. Previously, because of pressure from the auditors, BCCI had stopped using Capcom as its broker. Prior to the June 1987 meeting, Akbar had been contacting BCCI, seeking a $17 million loan for one of his companies. BCCI had resisted. At the June 25, 1987 meeting, Khalil asked that BCCI renew its relationship with Capcom. Naqvi explained that he could not authorize that. Khalil then pressed Naqvi to extend the loan Akbar had been seeking. Naqvi agreed to advance $17 million from BCCI to General Securities Corporation ("GESS"), a corporation owned jointly by Khalil and Akbar, which had an account at Capcom. The $17 million payment was made on June 25, 1987.

XI. Restructuring of Capcom US Shareholding

Khalil was acutely aware of Naqvi's vulnerabilities in their meetings in the summer of 1987 because Khalil faced his own exposure with Capcom. Khalil's trust in Akbar, such as it was, was on the wane. Khalil had agreed to the opening of Capcom US in 1985. Akbar reported to Khalil on a regular basis, but many of the day-to-day detail of Capcom's business had been left to Akbar.

The opening of Capcom US had invited scrutiny from the Chicago Board of Trade and other regulators in the United States. The Board of Trade had found that Capcom UK's ownership of Capcom US did not provide sufficient security.

Either Capcom UK would have to increase its share capital or any shareholder with a 5 percent or greater stake in Capcom US would need to provide a personal guarantee. Khalil did not want to provide such a guarantee. At the same time, circumventing such a regulation by using nominee shareholders troubled him. Many of the Capcom shareholders already were nominees, including Jawhary and Adham. Having just used his own nominee status to extract a $15 million pay-off from BCCI, Khalil knew exactly how a nominee might exploit that position with him.

Moreover, at this time of increased scrutiny, Khalil met with evasive responses from Akbar when he sought specifics about the various real and fictitious arrangements that Akbar had made regarding Capcom. The Court infers that Jawhary also advised Khalil that if regulators were ever to investigate Capcom's internal affairs, the records should reflect that directors, such as Khalil, had sought to bring the company under control.

Thus, when Khalil visited London in June 1987 to meet with Naqvi, he also had a separate meeting in Capcom UK's headquarters with Akbar, Khalil, and Jawhary. Khalil focused attention on the ownership of Paten Holding, which, on paper, had advanced $17 million to the Capcom UK shareholders on a non-recourse basis to fund a capital increase. In this case, Khalil testified that he and Akbar were equal owners of Paten. But the evidence is clear that in June 1987, Khalil was "furious" with Akbar, *see* Jawhary Dep. *(BCCI)* at 158, and wanted the record to reflect that he was the sole owner of Paten. Akbar protested; Jawhary simply wanted the matter resolved. Minutes of this meeting were prepared and signed by the participants, including Khalil. *See* Pls.' Ex. 1878. At

the meeting it was agreed that Khalil was the sole beneficial owner of Patent Holding.[26]

Another topic discussed was restructuring the shareholding in Capcom US. Time was running out to meet the Board of Trade's requirements. The option to increase Capcom UK's share capital was rejected. With Akbar no longer in a position to siphon funds from the BCCI treasury, Khalil had no interest in investing his own funds in Capcom. Khalil had also made it clear that he would not provide a personal guarantee. Akbar, however, was willing to sign a guarantee. Khalil, Jawhary, and Akbar tentatively agreed to a new arrangement in which Akbar would become the largest shareholder of Capcom US, at least on paper, with a 28 percent stake. However, Jawhary proposed that they explore other restructuring options to use additional nominees.

Some further discussions clearly took place. Khalil had traveled to Chicago to discuss with shareholders, Akbar, and attorneys the restructuring of Capcom UK's shareholding in Capcom US. On August 6, 1987, The Capcom Board sent Capcom US's Chicago counsel a letter announcing the new shareholding structure of Capcom US. *See* Pls.' Ex. 1945. Under the final structure, three shareholders would each hold in excess of *5* percent and would provide personal guarantees. Akbar's share had dropped to 14 percent, and the largest shareholder became Wadia Sayed Khalil, Khalil's brother, who purportedly bought 39 percent of Capcom US. On August 19, 1987, the Capcom UK Board formally ratified the new shareholding arrangement. Wadia Khalil did not testify in this case, and, from the evidence, the Court can only conclude that Khalil had found a nominee he could trust;

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[26] Subsequently, Khalil, Akbar, and Jawhary traveled to Geneva, where the lawyer who had incorporated Paten, and who acted as Paten's registered agent, resided. Khalil revised the power of attorney forms to restrict Akbar from freely using Paten without Khalil's knowledge.

Khalil beneficially owned the 39 percent of Capcom US held in his brother's name.

Concern over Akbar's trustworthiness and increased regulatory interest in Capcom US led Khalil to believe that he should disassociate himself from Capcom altogether—on paper. Separation from Capcom also meant divesting himself of Paten Holding, which was tied to Capcom on paper through the false loan agreements. During the autumn of 1987, Khalil had repeatedly requested reports from Capcom UK staff detailing the company's finances. Many of these demands were designed to pressure Akbar to be more forthcoming with Khalil in the conduct of their partnership. However, having received no satisfactory response, Khalil called for an extraordinary shareholders meeting, which was scheduled for February 5, 1988. Khalil's pressure tactics finally drew a response from Akbar, who agreed to a fixed payment to assuage Khalil's concerns regarding Akbar's embezzling from their jointly-owned companies and to allow Khalil to formally disassociate himself from Capcom and Paten Holding.

Two days before the shareholders meeting, February 3, 1988, Khalil signed documents purporting to transfer his shares in Capcom and Paten Holding to Akbar for £4 million. Khalil would now be a silent partner. Khalil took no steps to record the sale of his shares or to make other interested parties aware that he had sold his shares.

On the contrary, Khalil neither attended the February 5, 1998 shareholders meeting to announce the "sale" of his interest, nor did he advise any of the other shareholders as to the reason for his absence. Indeed, Khalil affirmatively concealed the paper sale of his shares from Jawhary and from other principals and directors of Capcom. In November 1988, long after Khalil had purported to have no further interest in Capcom, Khalil executed a proxy in favor of Jawhary for an extraordinary general shareholders meeting for Capcom UK.

XII. KHALIL'S RECORD SHAREHOLDING: BCCI, CCAH, CAPCOM

Khalil asserts that by the late 1980s, he had successfully withdrawn from his dealings with BCCI, CCAH, Capcom, and Akbar. The Court finds otherwise. Khalil took no steps to assure that the BCCI Holdings shares were ever taken out of his name. Although he had agreed with Naqvi that the shares could remain registered in his name until December 31, 1988 (itself an illegal nominee agreement), Khalil learned from Naqvi in 1989 that the shares still remained in his name. Indeed, in April 1989, another block of BCCI Holdings shares had been registered in Khalil's name. Khalil was never thereafter informed that the BCCI shares in his name were transferred to another owner, and he took no affirmative action to remedy the situation. In fact, all of the shares remained registered in the name of Khalil until April 1990, when the bulk of the shares were transferred to another shareholder. At the time BCCI was seized in 1991, a total of 57,748 shares remained registered in Khalil's name. Those BCCI Holdings shares remained in Khalil's name until the proceeds from the sale of the nominee interests were forfeited to the United States in December 1994.

As to the CCAH shares in Khalil's name, Khalil was a nominee shareholder in the illegal acquisition and maintenance of control of First American from March 1982 onwards. Khalil told Jawhary that he had sold his interest in First American, *see* Jawhary Dep. *(BCCI)* at 124-25, but Khalil took no affirmative steps to have the CCAH shares taken out of his name. In addition, Capcom shares remained registered in Khalil's name until at least July 1994. Khalil continued to receive Capcom shareholder materials until at least 1993 and made no request to have his name removed from the share register.

Indeed, to show that he was never, or at least no longer, a member of a conspiracy with BCCI management, Khalil introduced evidence of a meeting between himself, Adham's attorneys, and Jawhary in 1992. At that time, the United States Department of Justice ("DOJ") and the District Attorney of New York were investigating the circumstances of CCAH's nominal acquisition of First American. DOJ officials sought statements from the record shareholders of CCAH concerning the source of the funds for their nominal investment. The meeting was held to discuss possible responses to the DOJ request. At the meeting, Khalil discussed a cover story explaining that the money for the first investment in CCAH came from a real estate transaction brokered by Khalil. *See* Jawhary Dep. *(BCCI)* at 135-44, 146-49. Shortly before pleading guilty, Adham and Jawhary submitted a signed statement with the cover story to the DOJ. Khalil, on the other hand, refused to sign. The Court finds that, at the meeting, in which his counsel was not present, Khalil had been instrumental in creating the cover story. However, after the meeting, Khalil conferred with his counsel, and he subsequently refused to sign and submit a statement with the cover story to the DOJ.

Contrary to Khalil's intent in introducing this evidence, the Court finds that Khalil was again a willing co-conspirator in the cover story plot, but that he was more shrewd than his co-conspirators in assessing the risks of submitting such a tale to the DOJ. The evidence of Khalil's participation in this conspiracy lends further credence to the evidence demonstrating Khalil's participation in the nominee scheme and the Capcom conspiracy with Akbar.

XIII. Separate Payments to Akbar

On the theory that a conspirator is liable for the acts of co-conspirators in furtherance of the conspiracy, the Liquidators also sought to hold Khalil liable for payments made by BCCI

separately to Akbar. For example, in August 1988, Akbar traveled to Washington to meet with a Senate investigator about BCCI and First American. Following his meeting with the Senate investigator, Akbar sent a facsimile from Washington to London indicating that he believed that Capcom's continued success would require him to disclose harmful facts about BCCI (including the First American nominee scheme and frauds involving the Khalil accounts) to the Senate. In exchange for his silence, Akbar demanded $15 million from BCCI. Naqvi instructed CFC to make the payment by wire using United States bank accounts, to Capcom UK.

Although Akbar funneled this and other direct payments through Capcom, the Court finds that Akbar was operating outside the scope of his conspiracy with Khalil regarding these payments. Akbar is personally liable for these payments to BCCI; Khalil is not.

DISCUSSION

In his answer to the complaint, Khalil asserted thirteen affirmative defenses, some of which, if accepted, would have prevented the Court from reaching the merits of this dispute. *See Khalil,* 20 F. Supp.2d at 4-7 (discussing some of these). However, at trial Khalil focused only on the merits, leaving his affirmative defenses unattended and unaddressed. For example, Khalil's counsel made no mention of the statute of limitations, imputation, or standing in his closing argument. Moreover, in Khalil's Proposed Findings of Fact and Conclusions of Law—which, in a party's best-case scenario, could be adopted as the opinion of the Court—no mention is made of any affirmative defense other than the defense as to proximate cause.[27] As a matter of caution, the Liquidators

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[27] In fact, that defense is not "affirmative" in that plaintiffs bear the burden to prove that their losses were proximately caused by Khalil's

addressed issues such as imputation, adverse domination, and fraudulent concealment in their Proposed Findings and Conclusions, and Khalil did respond to those proposals.[28] But it is not up to plaintiffs to preserve defendant's affirmative defenses.

The Court finds that Khalil waived his affirmative defenses with the exception of defenses 6 and 9 related to causation.[29] Moreover, even if Khalil had preserved these issues, the Court would have found that the Liquidators are entitled to relief largely for the reasons they advance. *See* Pls.' Prop. Findings of Fact and Concl. of Law pp 112-140, 171-185.

Ultimately, the Court would have found that the Liquidators' claims accrued in April 1994. In addition to the reasons advanced by the Liquidators, discussion of the Supreme Court's opinion in *Klehr v. A.O. Smith Corp.*, 521 U.S. 179 (1997), would have been required.[30] The Supreme Court in *Klehr* strongly implied that some discovery rule applies to the civil RICO limitations period but was less

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conduct.

[28] The Court gave each party an opportunity to file a response to the other's Proposed Findings and Conclusions.

[29] *See United States v. Indiana Bonding and Surely Co.*, 625 F.2d 26, 29 (5th Cir. 1980); *Christen G. v. Lower Merion School Dist.*, 919 F. Supp. 793, 799 (E.D. Pa. 1996); *Turley v. Union Carbide Corp.* , 618 F. Supp. 1438, 1441 (S.D. W. Va. 1985); *Planells v. Howard Univ.*, 1983 WL 594 *11 (D.D.C. 1983); *cf. United States v. Republic Marine, Inc.*, 829 F.2d 1399, 1401-03 (7th Cir. 1987); *Aviation Development Co. v. C&S Acquisition Corp.* , 1999 WL 123718 *5 (S.D.N.Y. Mar. 8, 1999); *Long v. Methodist Hosp. of Indiana*, 699 N.E.2d 1164, 1166 (Ind. 1998).

[30] For the civil RICO claims, a four-year limitations applies. *Id.* at 183. Moreover, that period can be tolled if the plaintiff shows that she exercised due diligence but that defendants fraudulently concealed the facts of an alleged RICO violation. *Id.* at 195-96. Finally, *Klehr* left open the question of when a civil RICO claim accrues. *See id.* at 191.

certain as to what information the plaintiff must discover to trigger the limitations period. *See Klehr,* 521 U.S. at 185-86, 191-93. In this Circuit it has been assumed, but not decided, that the four-year limitations period for a civil RICO claim begins to run when the plaintiff discovered, or should have discovered, his injury. *See Riddell v. Riddell Washington Corp.,* 866 F.2d 1480, 1489-90 (D.C. Cir. 1989). Had it been necessary, the Court would have held that even under the most restrictive of the discovery rules left intact by *Klehr,* on the facts of this case, the Liquidators' suit was timely filed.

As to the merits, the Liquidators allege that Khalil is liable under the civil RICO provision, 18 U.S.C. § 1964(c). Count I covers Khalil's role in BCCI's acquisition of First American; Count II covers Khalil's role as a nominee on BCCI's shares and for the BCCI Treasury; Count III covers Khalil's role in the operation of Capcom; and Count IV covers Khalil's use of funds from BCCI to capitalize Capcom. In addition, Khalil asserted three common law counts covering the same conduct: Count V alleges common law fraud; Count VI is for unjust enrichment; and Count VII is for conversion.

OVERVIEW OF CIVIL RICO

RICO reaches higher-level criminal organisms that have evolved beyond simple schemes and single criminal acts. The operative criminal provision is 18 U.S.C. § 1962, which creates four distinct offenses. Common to each offense is "a pattern of racketeering activity."

> The phrase 'racketeering activity' is a term of art defined in terms of activity that violates other laws, including more than 50 specifically mentioned federal statutes, which forbid, for example . . . extortion, and various kinds of fraud. § 1961(1). The word 'pattern' is also a term of art defined to require 'at least two acts of racketeering activity . . . the last of which

> occurred within ten years after the commission of a prior act of racketeering activity.' § 1961(5).

Klehr, 521 U.S. at 183. Also common is some relation between the "pattern of racketeering activity" and an "enterprise," a defined term that includes corporations. *See* 18 U.S.C. § 1961(4).

> Subsection (a) renders unlawful the acquisition of any interest in or the establishment or operation of an 'enterprise' . . . with the proceeds of a 'pattern of racketeering activity.' . . . . Subsection (b) outlaws acquiring or maintaining an interest in or control of an enterprise 'through a pattern of racketeering activity.' . . . . Subsection (c), the subsection most litigated, outlaws the conduct of affairs of an enterprise (under circumstances outlined in the statute) 'through a pattern of racketeering activity.' Subsection (d) adds nothing substantive to the law. Rather, it makes it unlawful to conspire to violate any of the preceding three sections.

Danielsen v. Burnside-Ott Aviation Training Ctr, 941 F.2d 1220, 1224 (D.C. Cir. 1991).

> A special RICO provision—commonly known as civil RICO—permits '[a]ny person injured in his business or property *by reason of* a violation' of RICO's criminal provisions to recover treble damages and attorneys fees. § 1964(c).

Klehr, 521 U.S. at 183 (emphasis added).

COUNT I: ACQUISITION OF FIRST AMERICAN

Count I alleges that Khalil conspired to, and did, cause injury by agreeing to hold CCAH shares as a nominee, and by undertaking certain overt acts in furtherance of that agreement. The Liquidators allege that the injuries for which

they seek to recover were proximately caused by Khalil's violation of 18 U.S.C. § 1962(b). That section provides:

> It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to ***acquire or maintain, directly or indirectly, any interest in or control of any enterprise*** which is engaged in, or the activities of which affect, interstate or foreign commerce.

18 U.S.C. § 1962(b) (emphasis added). To recover on this claim the Liquidators must have proven: (1) that First American was an "enterprise"; (2) that Khalil acquired or maintained an interest in First American; (3) that such acquisition or maintenance involved violations of two or more specified federal laws within 10 years; (4) that those violations were related and continuous; and (5) that the BCCI corporate entities were injured "by reason of" (1) - (4). The Liquidators also allege in Count I that Khalil conspired with former BCCI management to acquire an interest in First American in violation of § 1962(b) and that the conspiracy also proximately caused the BCCI Group harm.

A. First American is an "Enterprise"

A RICO "enterprise" includes "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). An enterprise is established by a common purpose among the participants, organization, and continuity. *United States v. Richardson,* 167 F.3d 621, 625 (D.C. Cir. 1999). An enterprise is engaged in interstate and foreign commerce when it is "directly engaged in the production, distribution, or acquisition of goods and services in interstate commerce." *United States v. Robertson,* 514 U.S. 669, 672 (1995) (citations omitted). The interstate commerce requirement is met if either the activity of the enterprise or

the predicate acts of racketeering affect interstate commerce. *R.A.G.S. Couture, Inc. v. Hyatt*, 774 F.2d 1350, 1353 (5th Cir. 1985). First American was a multistate banking group—an enterprise—routinely engaged in interstate and foreign commerce.

B. Whether Khalil Directly or Indirectly "Acquired or Maintained" an "Interest In" or "Control Of" of First American

The Liquidators argue that Khalil can be held to have violated § 1962(b) so long as he "participated in a pattern of racketeering activity to acquire and maintain an interest in or control of First American." *See* Pls.' Prop. Findings and Concl. ¶ 211. This statement conflates their claims in Count I against Khalil for directly violating § 1962(b) and conspiring to assist BCCI in violating § 1962(b). For Khalil to have violated § 1962(b), it is necessary that he acquired an interest in or control of First American.

The Liquidators proved that Khalil directly acquired a nominal interest in First American by becoming a record shareholder of CCAH. But, according to the evidence, Khaiil did not acquire a beneficial interest in First American. BCCI, by contrast, acquired both a beneficial interest in, and control of, First American indirectly, through the nominees.

Acquiring beneficial stock ownership in a corporation undoubtedly is "acquisition" of "an interest in" an "enterprise" within the meaning of 18 U.S.C. § 1962(b). *E.g., Whaley v. Auto Club Ins. Ass'n*, 891 F. Supp. 1237, 1240-41 (E.D. Mich. 1995); *Moffatt Enter., Inc. v. Borden, Inc.*, 763 F. Supp. 143, 147 (W.D. Pa. 1990); *cf. Teague v. Bakker*, 35 F.3d 978, 994-95 n.23 (4th Cir. 1994). Accordingly, BCCI, as the beneficial owner of the CCAH shares in Khalil's name, acquired an interest in First American, and, as is discussed below, Khalil conspired with BCCI management to facilitate

BCCI's acquisition of that interest through a pattern of racketeering activity.

The harder question is whether Khalil, as the nominal owner of the stock beneficially owned by BCCI, can also be held liable under § 1964(c) for directly violating § 1962(b). A § 1962(b) "interest" in an enterprise is a proprietary one:

> The common or dictionary definition of ["interest"] includes 'right, title or legal share in something; participation in advantage, profit and responsibility.' . . . . It has also been defined as '(t)he most general term that can be employed to denote a right, claim, title, or legal share in something.' . . . . So defined, 'interest' in fact encompasses all 'property rights' in a business enterprise.

United States v. Martino, 691 F.2d 110, 112-13 (2d Cir. 1982) (per curiam)[31]; *see also Keystone Helicopter v. Textron, Inc.*, 1997 WL 786453 *2 (E.D. Pa. Dec. 2, 1997); *Nafta v. Feniks Int'l House of Trade*, 932 F. Supp. 422, 428 (E.D.N.Y. 1996).

Adopting this broad understanding of "interest," this Court finds that holding legal title to corporate stock that is beneficially owned by another is a sufficient "interest" in an enterprise to incur liability under § 1962(b).

> [T]he law recognizes the general principle that the legal title to shares may be in one person; that is, the holder of the stock certificate, whereas equitable ownership of all the shares, or a portion thereof, may be in another person. The whole beneficial interest in

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[31] Reading the provisions of RICO *in pan materia*, *Martino* interpreted "interest" as used in § 1962(b) as the Fifth Circuit interpreted the term "interest" in the RICO forfeiture provision, § 1963. *See United States v. Martino*, 681 F.2d 952 at 954, 955-56 (Former 5th Cir. 1982) (en banc).

> the shares may belong to others, or others may be beneficially interested with the registered owner or certificate holder . . . .

Blanton v. Austin, 392 S.W.2d 140, 143 (Tex. Ct. Civ. App. 1965). Both the holder of legal title and the beneficial owner have proprietary interests in the corporation. *Cf. Student Loan Marketing Ass'n v. Riley*, 104 F.3d 397, 407 (D.C. Cir. 1997) (ownership of legal title alone is a proprietary interest in the student loan context). The holder of title has the power to exercise the rights over the property. Failure to do so in accord with the wishes of the beneficiary may expose the title holder to separate liability, but the nominal owner is empowered to exercise proprietary rights nonetheless. This power is a sufficient to be considered an "interest in" the corporation within the ambit of § 1962(b). *See Martino*, 691 F.2d at 113.

In addition, on these facts, Khalil indirectly exercised control over First American. Khalil's considerable economic leverage over BCCI allowed him to control BCCI in certain respects. As Naqvi testified, BCCI had little choice other than to meet Khalil's demands for payment as a nominee. Because BCCI had actual control over First American, Khalil's power to control BCCI gave him derivative control over First American. *Cf. In re Am. Honda Motor Co., Inc. Dealerships Relations Litig.*, 958 F. Supp. 1045, 1054-55 (D. Md. 1997). For example, in 1984, Robert Altman authorized special treatment for Khalil when Khalil sought to cash his travelers checks. More importantly, Altman gave Khalil a briefing on First American's prospects in recognition of Khalil's power to demand such information. This is sufficient control for purposes of § 1962(b).

C. Khalil's Pattern of Racketeering Activity

The Liquidators have also proven that Khalil's conduct in relation to BCCI's illegal acquisition of First American was

part of a "pattern of racketeering activity." That element requires (1) at least two predicate acts of racketeering within ten years which are (2) related; and (3) have continuity. *H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497 (1985).

1. Predicate Acts

The predicate acts of racketeering in defendants' acquisition of First American included multiple acts of (1) wire and mail fraud in violation of 18 U.S.C. §§ 1341 and 1343; (2) bank fraud in violation of 18 U.S.C. § 1344; (3) travel and transportation in aid of racketeering in violation of 18 U.S.C. § 1952; (4) money laundering in violation of 18 U.S.C. § 1956; and (5) extortion in violation of 18 U.S.C. § 1951(b)(2).

(a) Wire Fraud/Mail Fraud

Wire and mail fraud require a "scheme to defraud" and the use of wires in interstate or foreign commerce, or of the United States mail, to further that scheme. *United States v. Lemire*, 720 F.2d 1327, 1334-35 (D.C. Cir. 1983).[32] To establish a violation of the wire and mail fraud statutes, proof is required only of a scheme to defraud, not the commission of the fraud itself. *United States v. Reid*, 533 F.2d 1255, 1264 (D.C. Cir. 1976). In addition, "[a]ll that is required is that [defendant] have knowingly and willfully participated in the scheme; she need not have performed every key act herself."

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[32] The requisite elements of "scheme to defraud" under the wire fraud statute, 18 U.S.C. § 1343 and the mail fraud statute, 18 U.S.C. § 1341, are identical. Thus, cases construing mail fraud apply to wire fraud as well. *See United States v. Maxwell*, 920 F.2d 1028, 1035 n.8 (D.C. Cir. 1990). In 1988, Congress enacted 18 U.S.C. § 1346, which ratified *Lemire's* holding that the object of a scheme to defraud could be deprivation of intangible property interests. *See* 18 U.S.C. § 1346; *Lemire*, 720 F.2d at 1336.

United States v. Maxwell, 920 F.2d 1028, 1035 (D.C. Cir. 1990).

A wire or mailing is in furtherance of an alleged scheme if it is "incident to an essential part of the scheme, or a step in the plot." *Schmuck v. United States*, 489 U.S. 705, 710-11 (1989) (citations and internal quotations omitted). Communications need not be fraudulent in themselves to serve as RICO predicates, as long as they further a fraudulent scheme. *United States v. Pemberton*, 121 F.3d 1157, 1170-71 (8th Cir. 1997); *Reid*, 553 F.2d at 1265. Nor is it required that a defendant be shown specifically to have intended to use the wires or mail service if their use was reasonably foreseeable. *United States v. Ross*, 131 F.3d 970, 981 (11th Cir. 1997), *cert. denied*, 113 S. Ct. 258 (1998).

A person commits wire or mail fraud if he causes an interstate or international wire communication or mailing to be made; it is not necessary that the person actually make the communication or even personally instruct that the communication be made. *United States v. Rogers*, 9 F.3d 1025, 1030 (2d Cir. 1993). Under the wire fraud statute, "an act [can be] caused not simply when it is a physical consequence of the person's conduct but when, in addition, the actor either knew the consequence would occur or its occurrence was reasonably foreseeable." *Id.* (citation and internal quotations omitted). A defendant may cause an interstate or international wire communication by placing an intrastate wire communication which foreseeably leads the financial institution with which the defendant is dealing to in turn place an interstate or international communication. *United States v. De Biasi*, 712 F.2d 785, 791 (2d Cir. 1983).

As set forth above, numerous specific acts constituting use of interstate and international wires and United States mail, such as wire transfers of U.S. dollars cleared through financial institutions in the United States, took place in

furtherance of the scheme to fraudulently acquire First American. These uses of wires and the United States mail were vital to the scheme to defraud because they authorized and effected the transfer of funds for the illegal acquisition of First American. Khalil authorized this use of wires and United States mail when he agreed that BCCI could take whatever actions it deemed necessary to purchase CCAH shares in his name. Use of United States mail and international wires was clearly foreseeable.

(b) Travel Act

Violation of the Travel Act requires; (1) travel in interstate or foreign commerce or use of a facility in foreign or interstate commerce; (2) with the intent to promote an unlawful activity; and (3) the performance or attempted performance or the facilitation of the performance of an overt act in furtherance of the unlawful activity. *United States v. Childress,* 58 F.3d 693, 719 (D.C. Cir. 1995) (citations omitted). Congress targeted the Travel Act not toward "sporadic, casual involvement [in the predicate offenses], but rather toward a continuous course of conduct sufficient for it to be termed a business enterprise." *United States v. Auerbach,* 913 F.2d 407, 411 (7th Cir. 1990). However, one instance of interstate travel is sufficient to establish interstate racketeering if defendant travels to further an illegal activity. *United States v. Vanichromanee,* 742 F.2d 340, 349 (7th Cir. 1984). And, in the case of a conspiracy, it is immaterial whether defendant personally caused or knew of interstate travel because, as a co-conspirator, he is liable for other participants' acts in furtherance of the conspiracy.[33]

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[33] *See Auerbach,* 913 F.2d at 410-11 & n.2; *see also* Annotation, *Interstate Travel As Element Of Offense Established By Travel Act,* 69 A.L.R. FED. 251 § 8 (1984 & 1998 Supp.); *see generally* Steven G. Shapiro, *Travel Act* in Project, *White Collar Crime: Fourth Survey of Law*

The "use of a facility in commerce" includes use of the United States mails, *United States v. Heacock*, 31 F.3d 249, 255 (5th Cir. 1994); the making of interstate telephone calls and telegraphs, *United States v. Jenkins*, 943 F.2d 167, 172-73 (2d Cir. 1991); and the interstate wire transfer of funds, *United States v. Antonick*, 481 F.2d 935, 938 (9th Cir. 1973).

In furtherance of their scheme to acquire nominal interests in First American for the benefit of BCCI, Khalil and Akbar violated 18 U.S.C. § 1952(a) by traveling in interstate and foreign commerce with the intent of furthering unlawful activity and thereafter engaging in such unlawful activity. For example, in 1981, Khalil, Akbar and others traveled from London to the District of Columbia for purposes of meeting with other nominee shareholders of the First American enterprise, consulting with attorneys, and testifying in front of the Federal Reserve with regard to the proposed purchase of the First American enterprise.

Additionally, Khalil was responsible for the use of a facility in commerce in furtherance of the scheme to defraud. In the course of this scheme, Khalil and Akbar, acting singly and in concert with Abedi and Naqvi, transferred the funds used to purchase shares in First American from accounts abroad to the United States and from the United States to accounts abroad with the intent to promote the carrying of their fraudulent ownership and management scheme and to conceal or disguise the nature, the location, the source, the ownership, and the control of the proceeds of their unlawful activity, in violation of 18 U.S.C. § 1952(a).

Subsequent to his 1981 trip to Washington, D.C., Khalil signed transfer deeds in blank and undertook other overt acts in furtherance of the scheme by which he had acquired a nominal interest in First American.

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of Substantive Crimes, 24 AM. CRIM. L. REV. 735 (1987).

(c) Money laundering

The requirements to prove money laundering in violation of 18 U.S.C. § 1956 differ depending on whether the offense is domestic or international. *See United States v. Piervinanzi,* 23 F.3d 670, 680 (2d Cir. 1994); Barrett Atwood & Molly McConville, *Money Laundering* in Project, *Fourteenth Survey of White Collar Crime,* 36 AM. CRIM. L. REv. 901, 904 (1999) [hereafter *Mail Fraud].*

Illegal money laundering within the United States requires that the defendants knowingly conducted a financial transaction or transferred funds which were the proceeds of illegal activity to promote the illegal activity or to disguise the nature, location, source or control of the proceeds. 18 U.S.C. § 1956(a)(1); *United States v. Wynn,* 61 F.3d 921, 924 (D.C. Cir. 1995). In a complex routing transaction, each transfer of funds, if it affects interstate or foreign commerce, can be a separate § 1956(a)(1) violation. *See* Atwood & McConville, *Mail Fraud* at 916-17. But the defendant must know that the proceeds with which he conducts the financial transaction are tainted. *United States v. Quintero,* 165 F.3d 831, 838 (11th Cir. 1999); *Piervinanzi,* 23 F.3d at 680.

By contrast, international money laundering in violation of § 1956(a)(2) does not require that "proceeds" first be generated by illegal activity, followed by a financial transaction with those proceeds. Instead it penalizes an overseas transfer "with the intent to promote the carrying on of specified unlawful activity." *Piervinanzi,* 23 F.3d at 680 (quoting § 1956(a)(2)(A)); *see also Quintero,* 165 F.3d at 838.

There is some circularity in considering international money laundering as a predicate "racketeering activity" under RICO as defined in 18 U.S.C. § 1961(1). This is because the "specified unlawful activities" that are predicates for an international money laundering violation under

§ 1956(a)(2)(A) also are those offenses listed in §1961(1). *See* 18 U.S.C. § 1956(c)(7)(A).

Khalil violated § 1956(a)(2) when he agreed to the transfer of funds to the United States to purchase CCAH shares in his name so as to further BCCI's fraudulent takeover of First American through BCCI's nominees.

(d) Extortion

Khalil also engaged in the RICO predicate act of extortion, defined as the "obtaining of property from another with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." 18 U.S.C. § 1951(b)(2). Fear of economic, rather than physical harm, is sufficient to establish an extortion claim under § 1951. *United States v. Tomblin,* 46 F.3d 1369, 1382 (5th Cir. 1995). The required effect on interstate commerce is *de minimis. Id.* at 1383-84; *United States v. Debs,* 949 F.2d 199, 202 (6th Cir. 1991). Extortion under D.C. CODE ANN. § 22-3851 is similarly defined.

In the course of the scheme to acquire and maintain controlling interest in First American, Khalil demanded payment from the BCCI Group in exchange for his agreement not to disclose the scheme and to continue his services as a nominee shareholder. Disclosure of the scheme would have substantially injured the BCCI Group, exposing it to financial loss and criminal prosecution. Payment of the extortion, at least the $15 million payment, affected foreign and interstate commerce. Khalil's threats in exchange for payment constituted extortion in violation of 18 U.S.C. § 1951.

(e) Financial institution fraud

Finally, Khalil also conspired to, and did, commit bank fraud in violation of 18 U.S.C. § 1344. That section prohibits engaging in or attempting to engage in a pattern or course of conduct designed to deceive a federally chartered or insured

financial institution into releasing property with intent to victimize the institution by exposing it to actual or potential loss. *United States v. Stavroulakis,* 952 F.2d 686, 694 (2d Cir. 1992). The financial institution need not incur loss nor must the defendant personally benefit from the scheme to defraud. *See United States v. Goldblatt,* 813 F.2d 619, 624 (3d Cir. 1987); *see also United States v. Moede,* 48 F.3d 238, 242 (7th Cir. 1995).

Khalil and his co-conspirators defrauded the First American banks, a financial institution within the meaning of 18 U.S.C. § 20, by concealing the material fact that First American's capitalization was being illegally diverted from BCCI through nominee loans, that First American's shares were pledged to secure purported loans to the nominee shareholders and that First American was illegally owned by a foreign banking group. Khalil, in conspiracy with Akbar and BCCI's senior officers, knowingly presented false testimony to the Board of Governors of the Federal Reserve Bank. In addition, the Liquidators established that Khalil knowingly participated in the misrepresentation of the First American investment as loans to Khalil, thereby falsifying BCCI's own books and records. This scheme was undertaken with specific intent to defraud and exposed First American to risk of loss.

2. Relatedness and Continuity

To form a "pattern" of racketeering activity, the aforementioned predicate acts need be "related" and "continuous." The indicia of relatedness between predicate acts include common: purpose, result, participants, victims, and methods of commission. *H.J., Inc.,* 492 U.S. at 240. The concept of continuity is primarily a temporal one. *Pyramid Securities, Ltd v. International Bank,* 726 F. Supp. 1377, 1382 (D.D.C. 1989), *aff'd,* 924 F.2d 1114 (D.C. Cir 1991). Continuity is measured by a "commonsense" approach, *H.J., Inc.,* 492 U.S.

at 241, focusing on the number and variety of predicate acts, the number of victims, the number of perpetrators, the presence of separate schemes, and the occurrence of distinct injuries. *See Edmonson & Gallagher v. Alban Towers Tenants Ass'n,* 48 F.3d 1260, 1264-65 (D.C. Cir. 1995); *Edison Elec. Inst. v. Henwood,* 832 F. Supp. 413, 417-18 (D.D.C. 1993).

In this case, the aforementioned acts of racketeering had the same or similar unlawful purposes, results, participants and victims and were not isolated events. The common theme of these multiple racketeering acts was illegally to acquire and maintain an interest in and control of the First American enterprise, nominally for Khalil and other nominee shareholders, by using BCCI Group funds to conceal the existence of that control, and to use that control for the benefit of the co-conspirators. These acts were essential elements of the unlawful scheme, were carried out within 10 years (and beyond), and constituted a pattern of racketeering in violation of § 1962(b).

Khalil agreed to participate in the nominee conspiracy, and he took no affirmative steps to withdraw from the scheme. Rather, Khalil specifically agreed to allow BCCI to continue to hold First American shares in his name until December 1988. Even after that time, he knew that the shares remained in his name, and he took no steps to remedy the situation or to bring the nominee scheme to the attention of the authorities. The Liquidators met their burden to prove that Khalil directly violated § 1962(b).

3. Proximate Cause

Because Count I is a civil RICO claim, § 1964(c) requires that the Liquidators show injury caused "by reason of"

Khalil's violation of § 1962(b).[34] The statute's "by reason of' phrase incorporates the principle of proximate causation. *See Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 265-68 (1992). The damage must be caused by the violation of § 1962 as opposed to by the predicate acts alone. *See Lightning Lube, Inc. v. Witco,* 4 F.3d 1153, 1190 (3d Cir. 1993). Thus, at trial, the Liquidators had the burden to demonstrate injury flowing proximately from Khalil's acquisition of his nominal interest in, and actual control over, First American through a pattern of racketeering activity. *Danielson v. Burnside-Ott Aviation Training Center Inc.*, 941 F.2d 1220, 1231 (D.C. Cir. 1991).

The parties agree that a defendant's acts proximately cause plaintiffs injuries when such acts are a substantial factor in the sequence of responsible causation, and where the plaintiff's injury was reasonably foreseeable or anticipated as a natural consequence of those acts. *See First American Corp. v. Al-Nahyan.* 17 F. Supp.2d 10, 22 (D.D.C . 1998); *see also In re American Express Co. Shareholder Litig.*, 39 F.3d 395, 399 (2d Cir. 1994).

At trial, the Liquidators proved that BCCI's investment in First American was economically detrimental. BCCI invested a total of $556,108,245, through its nominees, to acquire First American. After the Liquidators entered a guilty plea on behalf of BCCI to the criminal charges pending in this Court, BCCI's interests in First American were forfeited to the United States. From the liquidation of First American, $277,884,166 has been paid to the Liquidators. *See* Tr. (Gilkes) at 322-28. This being a negative return on investment, the Liquidators claim that the $278,224,079 loss

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[34] A civil RICO claim may be brought by "[a]ny person injured in his business or property by reason of a violation of section 1962 . . . in any appropriate United States district court . . . ." 18 U.S.C. § 1964(c).

is proximately attributable to Khalil's participation in the nominee scheme. Additionally, the Liquidators claim that the opportunity cost of BCCI's illegal investment in First American was $334,818,884.

However, the Court cannot find that these losses were proximately caused by Khalil's participation in the nominee scheme. Although it was foreseeable at the time Khalil participated in the scheme that BCCI was exposing itself to criminal liability which could result in the forfeiture of its First American holdings, too many intervening factors, such as changing market conditions over a considerable period of time and numerous independent decisions by First American management, led to these losses that the Liquidators seek to attribute to Khalil. *See Powers v. British Vita, P.L.C.*, 57 F.3d 176, 189 (2d Cir. 1995); *First Nationwide Bank v. Gelt Funding Corp.*, 27 F.3d 763, 769-72 (2d Cir. 1994).

On the other hand, other losses were directly attributable to Khalil's acquisition of a nominal interest in First American through a pattern of racketeering activity. For example, the $27.5 million paid to Khalil, although extorted from BCCI, was a transaction cost proximately imposed on BCCI by virtue of its use of nominees to accomplish the illegal acquisition of, and maintain its control over, First American. Additionally, payment of Khalil's expenses for his services as a nominee also were proximately caused by the pattern of racketeering activity by which Khail and BCCI acquired their respective interests in First American.

D. Conspiracy

In addition to alleging a direct violation of § 1962(b), Count I also charged Khalil with conspiracy to violate § 1962(b). Subsection (d) makes it unlawful "to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section." 18 U.S.C. § 1962(d). "A conspiracy is a

partnership in crime." *Pinkerton v. United States,* 328 U.S. 640, 644 (1946). To be liable under § 1962(d),

> [a] conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor.

Salinas v. United States, 522 U.S. 52,_____,118 S. Ct. 469, 477 (1997). A conspirator need not agree to commit or facilitate each and every part of the substantive offense; if the partners agree to pursue the same criminal objective and divide up the work, each is responsible for the acts of the other. *See id.* Indeed, "[a] person, moreover, may be liable for conspiracy even though he was incapable of committing the substantive offense." *Id.*

A conspirator remains party to the conspiracy unless and until he admits his participation to the authorities or communicates his abandonment in a manner reasonably calculated to reach co-conspirators. *See United States v. Thomas,* 114 F.3d 228, 267 (D.C. Cir.), *cert. denied,*—U.S. —, 118 S.Ct. 635 (1997). Once proof of a conspiracy is established, defendant has the burden of proving that he affirmatively withdrew from the conspiracy. *Id* at 269.

For the reasons set forth above, Khalil's agreement to act as an all-purpose nominee for BCCI, and his specific agreement to act as a nominee in BCCI's acquisition of First American makes him liable under § 1962(d).

In addition, the direct payments to Khalil and payment of his expenses also were proximately caused by this conspiracy. It is hornbook law that

> [o]nce the conspiracy has been formed, all its members are liable for injuries caused by acts pursuant to or in furtherance of the conspiracy. A

> conspirator need not participate actively in or benefit from the wrongful action in order to be found liable. He need not even have planned or known about the injurious action . . . so long as the purpose of the tortious action was to advance the overall object of the conspiracy.

Halberstam v. Welch, 705 F.2d 472, 481 (D.C. Cir. 1983). Khalil's agreement to act as a nominee was essential to BCCI management's obtaining regulatory approval for its illegal acquisition of First American. And, that approval was an essential link in the causal chain leading to the BCCI Group's injuries. The Liquidators are entitled to judgment on Count I.

COUNT II: OPERATION OF BCCI

Count II alleges that Khalil violated 18 U.S.C. § 1962(c) and conspired with, among others, Akbar, Abedi, and Naqvi to violate subsection (c). Section 1962(c) makes it unlawful

> for any person ***employed by or associated with any enterprise*** engaged in, or the activities of which affect, interstate or foreign commerce, to ***conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs*** through a pattern of racketeering activity or collection of unlawful debt.

18 U.S.C. § 1962(c) (emphasis added).

For purposes of Count II, the RICO enterprise in question is the BCCI Group entities.[35] The BCCI Group was an international banking group with operations in the United

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[35] Count II is unclear as to whether First American, as an actual subsidiary of BCCI, is part of the enterprise. It appears that the Liquidators have defined the enterprise as only the BCCI Group entities. The Court will accept that definition, as the inclusion of First American would have no impact on the Court's conclusion as to Count II.

States. There is little doubt that the BCCI Group was an "enterprise" within the statute's meaning. Moreover, the Liquidators adduced considerable unrebutted evidence that the affairs of the BCCI Group were conducted through a pattern of racketeering activity. For example, the circular routing of transactions by BCCI's Treasury unit involved the use of interstate and international wires and United States mail, including wire transfers of United States dollars cleared through accounts in financial institutions in the United States, in furtherance of the nominee scheme and with specific intent to defraud. These wires and mailings were vital to the scheme in that they authorized and effected transfers of funds for the purchase of BCCI shares and disguised non-performing loans and other losses. Moreover, Akbar, Khalil, and others associated with BCCI extorted money from the enterprise in exchange for allowing its illegal activities to further go undetected.

As detailed above, this scheme had several main elements, including (a) the use of Khalil as a nominee shareholder, thereby falsely inflating the BCCI Group's apparent capitalization; (b) using Khalil and Khalil-affiliated accounts to adjust and thereby conceal non-performing loans on the books of the BCCI Group; (c) using Khalil and Khalil-affiliated accounts to create the false appearance that the BCCI Group was earning profits on loans to purchase real property; and (d) using Khalil and Khalil-affiliated accounts to conceal the use of BCCI Group Treasury funds in high-risk commodities, options and futures trading and to create the false appearance of profits to the BCCI Group in connection with sham commodities, options and futures trading by concealing trading losses in accounts in the name of Khalil for which he had no liability.

Khalil, acting singly and in concert with Akbar, Abedi and Naqvi, transferred funds from accounts abroad to the United States and from the United States to accounts abroad with the

intent to promote the carrying on of their fraudulent scheme, and to conceal or disguise the nature, the location, the source, the ownership and the control of the proceeds of their unlawful activity, in violation of 18 U.S.C. § 1956(a)(1) & (2).

These acts of wire fraud and money laundering had the same or similar unlawful purposes, results, participants and victims and were not isolated events. They were part of the scheme to operate the BCCI enterprise through a fraudulent nominee scheme and continued within a ten-year period. *See Edison Elec. Inst.*, 832 F. Supp. at 417 (four-year scheme continuous); *Tabas v. Tabas*, 47 F.3d 1280, 1290-91 (3d Cir. 1995) (scheme lasting over three years meets RICO's continuity requirement).

A. Operation of Management of BCCI

Additionally, to recover under § 1962(c), the Liquidators had to show that Khalil was associated with an enterprise and participated in the conduct of the enterprise's affairs through a pattern of racketeering activity causing injury. *Danielson v. Burnside-Ott Aviation Training Center*, 941 F.2d 1220, 1231 (D.C. Cir. 1991).

Khalil clearly was "associated with" the enterprise, but the Liquidators also were required to show that Khalil participated in the conduct of the enterprise. Under the "operation or management" test, section 1962(c) liability is "not limited to those with a formal position in the enterprise, but some part in directing the enterprise's affairs is required." *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993) (footnote omitted).[36]

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[36] In *Reves*, the Supreme Court adopted, in large measure, the interpretation of § 1962(c) advanced in *Yellow Bus Lines, Inc. v. Drivers,*

Reves provided minimal guidance as to what categories of participants in a formal corporate enterprise might satisfy the operation or management test, stating only that the enterprise may be operated at least by:

> upper management, lower-rung participants in the enterprise who are under the direction of upper management, or others associated with the enterprise who exert control over it, as for example, by bribery.

MCM Partners, Inc. v. Andrews-Bartlett & Assoc., 62 F.3d 967, 977 (7th Cir. 1995) (quotations omitted) (citing *Azrielli v. Cohen Law Offices*, 21 F.3d 512, 521 (2d Cir. 1994)). Certainly Akbar, Abedi, and Naqvi were "upper management" covered by § 1962(c), and there is no doubt that those three individuals violated subsection (c) through the implementation of the nominee scheme. However, classifying a nominee shareholder and one of the bank's largest creditors (i.e. depositors), such as Khalil, is more difficult.

The *Reves* Court reserved decision on "how far § 1962(c) extends down the ladder of operation," 507 U.S. at 184 n.9, and left unmentioned whether those at the top of the ladder, shareholders and directors, may also be held to participate in the conduct of the enterprise. This question has received little attention to date. One court has suggested in passing that a controlling shareholder's power to direct the operation or management of the enterprise was sufficient to satisfy the operation or management test. *See LSJ Investment Co. v. O.L.D., Inc.*, 167 F.3d 320, 324 (6th Cir. 1999). Another court, however, has suggested that a RICO complaint alleging a § 1962(c) violation cannot rest on the allegation that the

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Chauffeurs & Helpers Local Union 639, 913 F.2d 948, 954-56 (D.C. Cir. 1990) (en banc).

defendant was president and principal shareholder, requiring some allegations as to how the defendant operated or managed the enterprise. *See Taylor* v. *Bob O'Connor Ford, Inc.*, 1999 WL 183656 *2 n.4 (N.D. Ill. Mar. 25, 1999).

Reves suggests that some form of actual control must be exercised, whether by insiders carrying out the enterprise's day-to-day business or by outsiders exercising some form of coercion over the enterprise, be that economic (e.g., bribery) or otherwise. With regard to insiders, the most difficult issue under this analysis is whether § 1962(c) liability may attach to a shareholder or director (1) who is in a position to exercise some control over those who operate or manage an enterprise; and (2) who has actual or constructive knowledge that the enterprise is being conducted through a pattern of racketeering activity; (3) but who does nothing active to facilitate the operation of the enterprise in such fashion. Had Khalil persuaded this Court that he was the beneficial owner of the BCCI Holdings shares in his name, this issue would have been reached.

However, because Khalil was only a nominee the Court must address the issue in slightly different fashion. Because Khalil never sought to exercise any of the voting rights of a BCCI shareholder, and because he had assigned those rights to ICIC, he was outside the formal corporate chain of command. Nonetheless, Khalil still was in a position to exert considerable control over the conduct of BCCI's affairs. BCCI'S extensive reliance on the use of Khalil's name and the name of his companies gave Khalil considerable leverage over the bank. In addition, as one of the bank's largest depositors, Khalil was one of its biggest creditors.[37] In

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[37] A bank deposit is, in essence, a loan, and depositors are creditors of the bank. *See Bank of Marin v. England*, 385 U.S. 99, 101 (1966); *United States v. BCCI Holdings (Luxembourg) S.A.*, 833 F. Supp. 9, 13-14 (D.D.C. 1993), *aff'd*, 46 F.3d 1185, 1191 (D.C. Cir. 1995).

colloquial terms, if Khalil had said "jump," Naqvi and Abedi would have had to respond "how high?" But Khalil exercised that leverage only to extort substantial amounts from the bank for his own benefit and to arrange for certain benefits to flow to Capcom and Akbar. Otherwise, Khalil did not concern himself with the details of any of the nominee transactions.[38] *Reves* requires something more. In the absence of evidence that Khalil actually exercised some control over the conduct of the BCCI Group, Khalil cannot be held civilly liable under § 1964(c) for a violation of 1962(c).

B. Conspiracy

However, Count II also includes a conspiracy charge under § 1962(d). A person can conspire to violate § 1962(c) even when that person is not in a position to operate or manage the enterprise. *See Salinas,* 118 S. Ct. at 477; *MCM Partners, Inc.*, 62 F.3d at 979; *see also United States v. Thomas,* 114 F.3d 228, 242-43 (D.C. Cir. 1997); *cf. United States v. Antar,* 53 F.3d 568, 580-81 (3d Cir. 1995); *United States v. Viola,* 35 F.3d 37, 43 (2d Cir. 1994); *Jones v. Meridian Towers Apartments, Inc.*, 816 F. Supp. 762-773 (D.D.C. 1993). Indeed, a § 1962(d) conspirator must only agree to a scheme

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[38] In the Liquidators' Proposed Findings and Conclusions, constant reference under Count II is made to "Khalil and Akbar" as a unit. Implicitly, this suggests a baroque theory for § 1962(c) liability under which Akbar's actions in conducting the affairs of BCCI are imputed to Khalil through the separate Khalil-Akbar conspiracy. It may be that such a theory is viable, but because of the Court's holdings on Counts II and III it is not necessary to pass on it. Akbar was operating on three levels while managing the BCCI Treasury Division and Khalil's accounts. In most transactions he acted within the scope of Naqvi's directions, and thus within the nominee conspiracy. In other respects, he acted within the scope of the Khalil-Akbar partnership, but those actions are covered by Count III. Finally, in other respects, Akbar acted for his own account only.

that will violate § 1962(c) without committing, or agreeing to commit, the predicate acts himself. *Salinas,* 118 S. Ct. at 478 (overruling *Viola,* 35 F.3d at 43, to the extent that it required that the conspirator to agree commit the predicate acts himself); *see Thomas,* 114 F.3d at 242-43; *see also United States v. Hoyle,* 122 F.3d 48, 50 & n.3 (D.C. Cir. 1997).

In this case, Khalil agreed and conspired with Akbar, Naqvi, Abedi, and others, to act as a nominee for those who operated and managed BCCI through a pattern of racketeering activity. The purpose of the scheme was to manipulate the assets, liabilities and capital, as well as the profits and losses, of the BCCI entities to give the false appearance of solvency and profitability. To this end the conspirators falsified BCCI's books and records to conceal from the BCCI Group and from regulators, creditors and depositors, that plaintiffs were in fact insolvent and unprofitable. This scheme permitted the BCCI Group companies to continue to operate, thereby allowing defendants to plunder the assets of plaintiffs for their own benefit.

Khalil did not know all of the specific details relating to the transactions undertaken in his name, but each co-conspirator need not have full knowledge as to the details of the illegal operations. Khalil "adopt[ed] the goal of furthering or facilitating the endeavor" and is liable as a co-conspirator. *Salinas,* 118 S. Ct. at 472. Indeed, in a case arising out of the well publicized savings and loan scandal in this country, a District Court upheld a jury verdict under § 1962(d) against a nominee like Khalil who "played the part of a straw man and furthered the scheme by entering into sham real estate transactions which generated artificial profits" for the financial institutions. *See In re American Continental Corp.,* 28 F.3d 104, 1994 WL 201195 (9th Cir. May 23, 1994) (unpublished disposition cited only for its report of the District Court's decision).

Applying § 1964(c)'s causation element to a § 1962(d) violation requires that the conspiracy, rather than the substantive RICO violation or the predicate acts, be the proximate cause of plaintiffs' injuries. In this case, as a direct and proximate result of defendants' agreement to conduct the affairs of the BCCI enterprise through a pattern of racketeering activity, the BCCI Group and its innocent creditors and depositors were injured in their business and property, as contemplated by § 1964(c). Khalil's agreement to act as a nominee was integral to the operation of the scheme. That agreement directly enabled Abedi, Naqvi, and Akbar to conduct numerous fraudulent transactions, and to disguise those transactions from the public. Khalil's consent to act as an all-purpose nominee was a direct and proximate cause in disguising these frauds, preventing regulators from closing down the bank earlier and minimizing the damage to the BCCI Group. As a result of these violations, the BCCI Group sustained a loss of assets that were squandered in these fraudulent transactions.

The Liquidators are entitled to judgment on Count II insofar as it alleges a violation of § 1962(d). The Liquidators divided the Treasury losses into three amounts: $62,021,193 for losses on silver and copper trading involving and facilitating accounts in Khalil's name; $614,000,000 from other losses; and $327,899,820 as the net additional loss after subtracting other categories of damages already accounted for. While it was smooth sailing for much of the Liquidators' proof on liability, their assertion of the latter two categories of damages founder on the shoals of the proximate cause requirement. The Court finds that the $62,021,193 is directly linked to the use of Khalil's name and the name of his companies. Although market conditions played an important role in bringing those losses about, the use of Khalil's name remained a substantial factor causing those losses. These

losses can be traced directly to the fraudulent use of Khalil-owned companies.

By contrast the other losses involved numerous additional factors outlined in the cross examination of Mr. Morris and covered a considerably longer period. The nexus between Khalil's agreement that his name be used and the $614,000,000 and $327,899,820 amounts is simply too remote.

Additionally, the Liquidators sought damages of $19,852,095 for the BCCI Holdings shares bought in Khalil's name. BCCI loaned itself this amount. Although the evidence was clear that Khalil was not responsible for repayment of these loans, the Liquidators ask that for purposes of damage calculations, the Court treat these as real obligations. The Liquidators cited no authority for the proposition that a Court can find a transaction to be fraudulent for liability purposes and *bona fide* for purposes of calculation of damages.

As was the case with Khalil's service as a nominee for the First American acquisition, the Court finds that the damages directly attributable to Khalil's agreement to serve as a BCCI nominee were those direct payments to Khalil and the payment of his considerable expenses.

COUNT III: OPERATION OF CAPCOM

Count III also alleged a violation of § 1962(c). Here, the enterprise is Capcom UK and its subsidiaries. On this count, Khalil is both directly liable and liable as a § 1962(d) conspirator.

Like BCCI and First American, Capcom UK, with its subsidiaries Capcom US and Brenchase Limited, was an enterprise. Capcom represented the formal incorporation of a partnership between Khalil and Akbar. Khalil and Akbar conspired to, and operated, Capcom through a pattern of

racketeering activity, causing injury to the BCCI group in violation of § 1962(c). Capcom's capital and trading funds were obtained from BCCI by Akbar, with Khalil's knowledge, consent, and participation. Akbar, also with Khalil's knowledge and consent, further caused Capcom to engage in circular routing transactions for the purpose of assisting in the falsification of BCCI's books and records in order to hide non-performing assets.

Khalil was a significant shareholder and director of Capcom. With Akbar, he controlled a majority of the shares of Capcom in his own name and through nominees. Although Akbar was not a registered shareholder or director of Capcom UK until 1987, at all times from its inception, Akbar was the principal manager, through other individuals, of Capcom UK. As a director, Khalil kept his distance from many day-to-day decisions, but he also directly participated in the operation and management of Capcom in a number of dealings, including Capcom's relationship with BCCI and the restructuring of Capcom Chicago's shareholding. Consequently, both Khalil and Akbar conducted, and participated in the conduct of, Capcom's affairs within the meaning of § 1962(c).

Additionally, Khalil individually, and through Akbar, engaged in acts of racketeering including (a) wire and mail fraud in violation of 18 U.S.C. §§ 1341 and 1343; (b) travel or transportation in aid of racketeering in violation of 18 U.S.C. § 1952; (c) money laundering in violation of 18 U.S.C. § 1956; and (d) extortion in violation of D.C. CODE ANN. § 22-3851 and 18 U.S.C. § 1951.

Numerous fraudulent transactions through which funds were siphoned from BCCI's treasury were completed through use of interstate and international wires, including wire transfers of United States dollars cleared through accounts in financial institutions in the United States. These acts were vital to Khalil and Akbar's operation of Capcom in that they

permitted and effected the transfer of finds from BCCI to Capcom to fund Capcom's trading activities, and to hide BCCI losses and non-performing assets.

Khalil and Akbar also violated 18 U.S.C. § 1952(a) through their respective travel to the United States in 1987-88. Khalil traveled from abroad to Illinois in August 1987 to handle Capcom business, including the restructuring of Capcom UK's shareholding in Capcom US. Akbar traveled from abroad to the District of Columbia and New York to undertake business transactions on behalf of the Capcom enterprise.

Khalil, acting singly and in concert with other defendants, transferred funds from accounts abroad to the United States and from the United States to accounts abroad with the intent to promote the carrying on of their scheme to loot BCCI for the benefit of Capcom and to disguise the nature, source, ownership and control of the proceeds of their unlawful activity in violation of 18 U.S.C. § 1956(a)(1) & (2). In the course of conducting the Capcom enterprise, defendants also violated D.C. CODE ANN. § 22-3851 and/or 18 U.S.C. § 1951 by extorting the property of the BCCI Group.

The racketeering activities described above were undertaken for the common purpose of furthering Khalil and Akbar's fraudulent scheme to obtain surreptitiously substantial sums from BCCI and to utilize Capcom to falsify BCCI's books and records. These acts were part of a recurring pattern of activity which continued from 1984 until at least 1988. These acts were essential elements, or incident to essential elements, of Khalil and Akbar's scheme and constituted a pattern of racketeering. Although Khalil signed papers in early 1988 making it appear as if he had transferred his interest in Capcom to Akbar, Khalil maintained his beneficial interest in Capcom through nominee shareholders. Moreover, even if Khalil had intended to withdraw from the

conspiracy, his actions were insufficient to communicate that withdrawal. *Cf. Antar,* 53 F.3d at 582-84.

As a direct and proximate result of Khalil and Akbar's scheme to conduct the affairs of Capcom through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c) and (d), the BCCI Group and their innocent creditors and depositors were injured in their business and property, as contemplated by 18 U.S.C. § 1964(c). As a result of these violations, the BCCI Group sustained a loss of assets that were acquired and converted by defendants in these fraudulent transactions and sustained a further loss of assets in meeting defendants' extortion demands.

COUNT IV: INVESTMENT IN CAPCOM

Count IV alleges a violation of § 1962(a). This section embodies Congress's central objective in 1970 to address the infiltration of legitimate businesses by members of organized crime using funds derived from illegal enterprises. *See* Gerald E. Lynch, *RICO: The Crime of Being a Criminal, Parts I and II,* 87 COLUM. L. REV. 661, 676-78 (1987). It provides in pertinent part:

> It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of [18 U.S.C. § 2], ***to use or invest directly or indirectly, any part of such income, or the proceeds of such income, in acquisition*** of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

18 U.S.C. § 1962(a). However, because of the multiple elements that must be satisfied to prove a violation, this section is applied relatively infrequently. *See* Lisa Pritchard Bailey et al., *Racketeer Influenced and Corrupt*

Organizations in Project, *Fourteenth Survey of White Collar Crime,* 36 AM. CRIM. L. REV. 1035, 1058 & nn.175-76 (1999).

Count IV alleges that Khalil and Akbar conspired to, and did, violate § 1962(a) by receiving income from BCCI through a pattern of racketeering activity and using those funds to establish and operate Capcom. For the reasons stated above, and for those additional reasons cited in the Liquidators' Proposed Findings and Conclusions, the Court holds that Khalil and Akbar conspired to, and did, violate § 1962(a) by siphoning funds from BCCI and channeling them into Capcom. However, § 1964(c) additionally requires that the Liquidators show that the BCCI Group entities were injured "by reason of" the § 1962(a) violation; that is, that their "injury flowed from the defendant's use or investment of racketeering income." *Danielsen,* 941 F.2d at 1229; *see also Sadighi v. Daghighfekr,* 1999 WL 38430 *20 n.9 (D.S.C. Jan. 22, 1999) (collecting cases). The Liquidators did not carry their burden to demonstrate injury proximately flowing from Khalil and Akbar's use or investment of funds funneled from BCCI's treasury into Capcom.

COMMON LAW COUNTS

In addition to the above-discussed RICO counts, the Liquidators asserted three claims under the common law of the District of Columbia, seeking liability for Khalil's role as a nominee for BCCI and for his role in Capcom. The Court has some reservations about these claims. While Khalil's role in facilitating BCCI's takeover of First American plainly made him subject to the common law of District of Columbia, the nexus to the District of Columbia as to some of the other conduct is rather remote. The BCCI Treasury scheme involved fraudulent transfers through accounts in New York; the Capcom scheme touched ground in New York, Illinois, and elsewhere.

Rather than quilting together the law of various jurisdictions in the United States to cover Khalil's roles in these schemes, the Liquidators alleged that District of Columbia law applied to all of Khalil's conduct. Khalil's Proposed Findings and Conclusions raise no choice-of-law issues, also proposing that District of Columbia law properly be applied to Counts VII. Any objections to the application of District of Columbia law have been waived. *See CSX Transportation, Inc. v. Commercial Union Ins. Co.*, 82 F.3d 478, 482-83 (D.C. Cir. 1996).

COUNT V: FRAUD

Under the common law of the District of Columbia, a plaintiff alleging fraud must prove five elements: (1) a false representation, (2) in reference to a material fact, (3) made with knowledge of its falsity, (4) with intent to deceive, and (5) on which reliance is placed. *D'Ambrosio v. Colonnade Council of Unit Owners*, 717 A.2d 356, 361 (D.C. 1998). These elements must each be proven by clear and convincing evidence. *Hercules & Co., Ltd. v. Shama Restaurant Corp.*, 613 A.2d 916, 923 (D.C. 1992).

An actionable representation is made either by an affirmative representation or the "concealment of a fact which should have been disclosed." *Jacobs v. District Unemployment Compensation Board*, 382 A.2d 282, 286 n.4 (D.C. 1978); *accord Andolsun v. Berlitz Schools of Languages of America, Inc.*, 196 A.2d 926, 927 (D.C. 1964); *Reed v. Philip Morris Inc.*, 1997 WL 538921 at *6 (D.C. Super. Aug. 18, 1997). Mere silence is not a false representation unless there is a duty to speak. *See Kapiloff v. Abington Plaza Corp.*, 59 A.2d 516, 517-18 (D.C. 1948). A duty to speak arises either by operation of law in fiduciary relations or otherwise where the circumstances so warrant. *See, e.g. Andolsun*, 196 A.2d at 927 (party's foreseeable reliance gave rise to duty to speak); *Kapiloff* 59 A.2d at 518

(truthful statements with material omissions are actionable misrepresentations).

The knowledge-of-falsity element requires either subjective knowledge that the statement was false or reckless disregard for the statement's truth. *See Jacobs*, 382 A.2d at 287 (using common law standard to interpret statutory fraud provision); *see also* RESTATEMENT (SECOND) OF TORTS § 526 cmt. e (1977) (reckless disregard is shown where speaker "recognizes that there is a chance, more or less great, that the fact may not be as it is represented."). Finally, under the reliance element, at least in arms-length dealings, the reliance must be reasonable. *Hercules & Co., Ltd. v. Shama Restaurant Corp.*, 613 A.2d 916, 923 (D.C. 1992).

The Liquidators have established that Khalil participated in a scheme to misrepresent transactions which were then recorded by his co-conspirators on the books and records of BCCI. The misrepresentations resulted in the recording on BCCI's books as loans certain transactions which in fact were not loans at all, but rather were gratuitous transfers to Khalil.[39] In reliance on these misrepresentations as to the purpose of these transactions, the BCCI Group corporations were caused to fund illegal investments in First American, BCCI Holdings and Capcom shares. BCCI's books were also falsified in that non-performing loans were shown to be performing, preventing BCCI from making a true calculation

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[39] The Liquidators have further proven that Khalil committed other fraudulent acts. He read a statement to the Federal Reserve in connection with the takeover of First American in which he represented that he would be investing funds to acquire First American and that his personal wealth would be part of the "financial resources of the Investor group" purporting to be the new owners of the bank. *See* Pls.' Ex. 330. The statement was false and proximately caused BCCI to violate United States law. None of Khalil's funds were used to purchase First American, and the Federal Reserve reasonably relied on the statement in approving the transaction.

of its profits, losses and ultimate value. BCCI also funded, through overdraft accounts which in fact Khalil had no obligation to repay, personal and business expenses for Khalil, including property purchases, purchases of art objects and antiquities for Khalil's private museum and payment of travel expenses for Khalil and his family.

COUNT VI: UNJUST ENRICHMENT

Count VI alleges that Khalil was unjustly enriched by the benefits he extracted from BCCI. The doctrine of unjust enrichment has at all times been fundamentally equitable in nature, notwithstanding its long association with the law of contracts. *See Emerine v. Yancey*, 680 A.2d 1380, 1383-84 (D.C. 1996); *4934, Inc. v. District of Columbia*, 605 A.2d *50, 55-56* (D.C. 1992); *cf. Ellsworth Assoc., Inc. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996) (unjust enrichment "sound[s] in tort, not contract").

To qualify for an award of restitution under this theory, the plaintiff must show that she conferred a benefit (usually money) on defendant under circumstances in which it would be unjust or inequitable for the defendant to retain the benefit. *Id* at 1383 ; *4934, Inc.*, 605 A.2d at *55*.

Because of the doctrine's equitable nature:

> [E]very unjust enrichment case is factually unique, for whether there has been unjust enrichment must be determined by the nature of the dealings between the recipient of the benefit and the party seeking restitution, and those dealings will necessarily vary from one case to the next.

4934, Inc., 605 A.2d at *55*.

On the unique facts of this case, there is no question that Khalil has been unjustly enriched to the tune of millions in the keys of dollars, pounds and riyals. Khalil received

numerous benefits, including direct payments, and payment of personal and business expenses, such as property purchases, purchases of art objects and antiquities for his private museum, and payment of travel expenses for himself and his family. He was aware that these benefits were provided by BCCI and that he did not pay for the benefits because he received monthly account statements which indicated that no debits had been made to his accounts. On the facts of this case, it would be inequitable for defendant to benefit from BCCI's payments on his behalf.

COUNT VII: CONVERSION

Count VII alleges that Khalil converted substantial sums obtained from BCCI for his own use. Conversion occurs when a defendant unlawfully exercises ownership, dominion or control over the personal property of another in denial or repudiation of his rights thereto. *Duggan v. Keto,* 554 A.2d 1126, 1137 (D.C. 1989); *see also Primedical, Inc. v. Allied Inv. Corp.,* 1994 WL 149139 *7 (D.D.C. Mar. 31, 1994), *aff'd,* 50 F.3d 1096 (D.C. Cir. 1995).

Without elaboration or discussion, the Liquidators argue that the sums Khalil extorted from BCCI should be awarded as damages on Count VII. In addition, the Liquidators argue that Khalil's expenses paid for by BCCI also were converted,—presumably on the theory that Khalil was obliged to repay these amounts and never did. Finally, the Liquidators assert that the sums Khalil and Akbar siphoned from BCCI were converted by them.

As to the amounts extorted, there appears some doctrinal tension between the elements of extortion and conversion. Extortion requires the "obtaining of property from another with his consent" where that "consent" is induced by a threat. *See* 18 U.S.C. §1951. Conversion requires the exercise of dominion in repudiation of the rightful owner's rights. A

consensual transfer generally invalidates a conversion claim. *See Equity Group, Ltd v. Painewebber Inc.*, 48 F.3d 1285, 1286 (D.C. Cir. 1995) (plaintiffs "valid consent to the transfer means there was no conversion"). It may be that a consensual transfer induced by a threat is not consensual for purposes of a common law conversion claim in the District of Columbia, but the Liquidators have cited no authority for that proposition.

Separately, the Liquidators have not addressed whether extortionate conduct is directly actionable in tort. *Compare Clark v. World Airways, Inc.*, 1980 WL 271 *1 (D.D.C. Oct. 24, 1980) (no "tort of extortion" existed at common law) *with Hart v. E.P. Dutton & Co.*, 93 N.Y.S.2d 871, 874 (N.Y. Sup. Ct. 1949) (referring to a tort "action for extorting money by threats") (citing Salmond on the Law of Torts 194 (8th ed.)); *cf.* James Lindgren, *The Elusive Distinction Between Bribery and Extortion: From the Common Law to the Hobbs Act*, 35 UCLA L. REV. 815, 852 (1988) (citing a 1620 example in which a conversion was predicate for extortion charge). Accordingly, the Court will not award the $27.5 million extorted by Khalil as damages on Count VII.

As to the amounts paid for Khalil's expenses, the elements of conversion have not been met. BCCI willingly paid Khalil's expenses for his service as a nominee. Khalil was under no obligation to repay these amounts to BCCI.

However, the Court finds that Khalil is liable on Count VII for those funds siphoned from the BCCI Treasury to fund Capcom. By transferring those funds from BCCI without authorization, Akbar and Khalil, as his partner, exercised unlawful dominion over those funds and converted them to their own use.

DAMAGES

As a result of the schemes set forth above, Khalil received substantial benefits from BCCI. The benefits were conferred in payment for Khalil's participation in the nominee scheme and in response to demands from Khalil. The benefits were in the form of direct payments to Khalil, payments of Khalil's expenses, payments to Khalil owned companies.

A. Direct Payments to Khalil—$27,500,000

Pursuant to the schemes described above, BCCI made direct payments to Khalil of $27,500,000. In 1986, at Akbar's direction and with Naqvi's ratification, Khalil received a check for $12,500,000. Then, in July 1987, BCCI made a final direct payment to Khalil of $15,000,000. That payment was made using international and United States wire facilities. Pursuant to the nominee conspiracy, BCCI was obliged to pay Khalil some amount for his service as a nominee. Khalil used his economic leverage and threats of exposing the scheme to extort larger direct payments than BCCI would have otherwise paid pursuant to the nominee arrangements. It would be unjust to allow Khalil to keep these funds. As a result of these payments, the Liquidators are entitled to recover $27,500,000 either as damages on Counts I, II or V, or as restitution under Count VI.

B. Payments of Expenses—$15,249,283

For Khalil's participation in the schemes described above, BCCI paid expenses totaling $15,249,283 for the acquisition and maintenance of properties, the purchase of antiquities, and travel and living expenses paid by BCCI. As was detailed in Gilkes's testimony, $2,249,352 was paid by BCCI for expenses arising from the acquisition and maintenance of Khalil-owned properties in the United States and United Kingdom. BCCI paid a total of $3,073,092 to acquire art and

antiquities for Khalil. BCCI also paid an additional $9,926,839 to cover Khalil's credit card bills, advances to his son, and other miscellaneous expenses. These payments were made to Khalil for his nominee role both as to BCCI and First American. There was no commercial advantage in BCCI's providing this "VIP service" to Khalil, and it would be unjust to allow him to retain this sum. Accordingly, the Liquidators are entitled to recover $15,249,283 either as damages on Counts I, II, or V, or as restitution under Count VI.

C. Payments to Khalil-Owned Companies—$47,069,808

In addition to direct payments, Khalil also benefitted from $47,069,808 in payments made by BCCI to companies he owned with his co-conspirator, Akbar. Between May and November 1984, Akbar caused BCCI to make payments totaling $5,069,808 to Capcom UK. Neither Naqvi nor Abedi ratified this payment. Then, on June 17, 1985, BCCI made a further payment to Capcom UK of $25,000,000 by the use of international and United States wire facilities.

Finally, between June and October 1987, as a result of Khalil's intervention with Naqvi, BCCI engaged in a series of transactions, using international and United States wire facilities, resulting in a payment of $17,000,000 to General Securities Corporation ("GESS"), a company created by Akbar and jointly owned by Akbar and Khalil. *See* Tr. (Gilkes) at 207-12. This was to have been a loan, but the loan was never repaid. Neither the direct payments to Khalil, the payments to his companies, nor the payments of his expenses were made using Khalil's deposits and accumulated interest at BCCI. *Id* at 246-47. The Liquidators are entitled to recover $47,069,808 as damages under either Counts III or VII, or as restitution on Count VI.

D. Additional Payments to Capcom-$236,562,250

As a result of the schemes described above, between 1984 and 1986, Akbar caused BCCI to send $236,562,250 to Capcom, and that amount was never repaid to BCCI. Tr. (Gilkes) at 277-83. Most of these payments from BCCI to Capcom were made using international and United States wire facilities. The Liquidators are entitled to recover $236,562,250 as damages under either Counts III or VII, or as restitution on Count VI.

E. Treasury Losses-$62,021,193

As a direct result of the silver and copper trading involving and facilitated by accounts in Khalil's name, BCCI suffered losses of $62,021,193. Tr. (Gilkes) at 306-07. The Liquidators are entitled to recover this amount as damages under either Count II or Count V.

PREJUDGMENT INTEREST

The Liquidators seek recovery of prejudgment interest for the damages awarded on both the RICO and the common law counts. As a general matter, "prejudgment interest serves to compensate for the loss of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress." *West Virginia v. United States,* 479 U.S. 305, 310 n.2 (1987); *see also generally* Michael S. Knoll, *A Primer on Prejudgment Interest, 75* TEX. L. REV. 293 (1996) (analyzing the options for, and mechanics of, accomplishing the goal of full compensation).

As to the RICO damages, there is a threshold question as to whether prejudgment interest is even available. Congress patterned 18 U.S.C. § 1964(c) after the Clayton Act. *See Klehr,* 521 U.S. at 188-89. Like the Clayton Act, RICO entitles a successful plaintiff to have her actual damages trebled. However, unlike the Clayton Act, which expressly

authorizes prejudgment interest, RICO is silent as to the availability of prejudgment interest. *See* G. Robert Blakey & Thomas A. Perry, *An Analysis of the Myths That Bolster Efforts to Rewrite RICO and the Various Proposals for Reform: "Mother of God--Is This the End of RICO?,* 43 Vand. L. Rev. 851, 968 & nn. 383-84 (1990) (proposing that RICO be amended to authorize prejudgment interest awards). Congress has previously considered a bill to allow recovery of prejudgment interest. *See* James P. Kennedy, *Civil RICO in the Antitrust Context, 55* Antitrust L.J. 463, 491 (1986) (summarizing provisions of H.R. 5290, 101st Cong., 2d Sess. (1986)). If prejudgment interest is available, a question arises as to whether prejudgment interest also is trebled. *See* Judith A. Morse, Note, *Treble Damages Under RICO: Characterization and Computation,* 61 Notre Dame L. Rev. 526, 546 (1986). The Court will assume, without deciding, that prejudgment interest is available for awards under § 1964(c).

As to the damage award on the common law counts, District of Columbia law controls. *See Schneider v. Lockheed Aircraft Corp.,* 658 F.2d 835, 855 (D.C. Cir. 1981). In an action sounding in tort, District of Columbia law permits the award of prejudgment interest "to the extent that it will make the injured party whole." *Duggan v. Keto,* 554 A.2d 1126, 1140 (D.C. 1989); D.C. CODE ANN. § 15-109 (1981). The Court will assume, without deciding, that prejudgment interest also would be available for an award of restitution on a claim of unjust enrichment.

Where prejudgment interest is neither prohibited nor mandatory, the decision to award prejudgment interest is committed to the sound discretion of the district court. *See Frederick County Fruit Growers Ass 'n v. Martin,* 968 F.2d 1265, 1275 (D.C. Cir. 1992). The exercise of that discretion is guided by consideration of "[1] whether prejudgment interest is necessary to compensate the plaintiff fully for his injuries;

[2] the degree of personal wrongdoing on the part of the defendant; [3] the availability of . . . investment opportunities to the plaintiff; [4] whether the plaintiff delayed in bringing or prosecuting the action; and [5] other fundamental considerations of fairness." *See Osterneck v. Ernst & Whinney*, 489 U.S. 169, 176 (1989). [40] In essence, the trial court must determine whether it is fair to treat the defendant as plaintiff's banker, with the plaintiff's damages having been on deposit with the defendant from the time plaintiff's claim accrued.

In this case, the need to fully compensate the innocent depositors and creditors of BCCI, who will benefit from the damages awarded in this case, favors an award of prejudgment interest. However, other factors weigh against such an award. Khalil was a knowing and willful participant in the activities leading to the damages awarded herein, but his culpability was relatively less than that of Akbar, Abedi, and Naqvi. Khalil is partially responsible for the delay in the resolution of this dispute, but other factors also contributed to that delay. The considerations on both sides of the scale are weighty, but ultimately the Court concludes that in light of the unique circumstances of this case a prejudgment interest award would be unfair to Khalil.

CONCLUSION

Accordingly, for the reasons stated, it is hereby

ORDERED that judgment in favor of the Liquidators and against defendant Khalil shall be entered in the amount of

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[40] While the Supreme Court articulated these factors in the context of a damages award for federal securities fraud, these factors are clearly of more general applicability. In any event, the facts of this case are sufficiently analogous to securities fraud to make application of the *Osterneck* factors appropriate.

$42,749,283 on Count I *(see supra* at 107-08 categories A and B); it is

FURTHER ORDERED that judgment in favor of the Liquidators and against defendant Khalil shall be entered in the amount of $104,770,476 on Count II *(see supra* at 107-09 categories A, B, and E); it is

FURTHER ORDERED that judgment in favor of the Liquidators and against defendant Khalil shall be entered in the amount of $326,381,341 on Count III *(see supra* at 108-09 categories C and D); it is

FURTHER ORDERED that judgment in favor of defendant Khalil shall be entered on Count IV.

FURTHER ORDERED that judgment in favor of the Liquidators and against defendant Khalil shall be entered in the amount of $104,770,476 on Count V *(see supra* at 107-09 categories A, B, and E); it is

FURTHER ORDERED that judgment in favor of the Liquidators and against defendant Khalil shall be entered in the amount of $326,381,341 on Count VI *(see supra* at 107-09 categories A, B, C, and D); it is

FURTHER ORDERED that judgment in favor of the Liquidators and against defendant Khalil shall be entered in the amount of $283,632,058 on Count VII *(see supra* at 108-09 categories C and D); it is

FURTHER ORDERED that the total, non-duplicative amount to which the Liquidators are entitled on Counts I, II, III,V,VI, and VII is $388,402,534 *(see supra* at 107-09 categories A through E). Pursuant to 18 U.S.C. § 1964(c) that amount is trebled to total $1,165,207,602; it is

FURTHER ORDERED that if the Liquidators seek attorneys' fees and costs, a motion to that effect shall be filed not later than 30 days after the issuance of the mandate from

the Court of Appeals, if any appeal be taken, or from the date on which the time for filing an appeal expired; it is

FURTHER ORDERED that a hearing on the Liquidators' motions for default judgment shall be held on July 15, 1999 at 9:30 a.m.; and it is

FURTHER ORDERED that the Court anticipates entering her Rule 58 judgment on or about July 15, 1999.

IT IS SO ORDERED.

June 23,1999.

/s/ JOYCE HENS GREEN
JOYCE HENS GREEN
United States District Judge

APPENDIX C

18 U.S.C. §1962

Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or

participate, directly or indirectly, in the conduct of such enterprises's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASE NUMBER 1:95CV01252

JUDGE: Joyce Hens Green

DECK TYPE: Civil General

DATE STAMP: 07/03/95

BCCI HOLDINGS (LUXEMBOURG),
SOCIETE ANONYME,
Airport-Center
5 rue Höhenhof
L-1736 Senningerberg
Luxembourg,

BANK OF CREDIT AND COMMERCE
INTERNATIONAL, SOCIETE ANONYME
Airport-Center
5 rue Höhenhof
L-1736 Senningerberg
Luxembourg,

BANK OF CREDIT AND COMMERCE
INTERNATIONAL (OVERSEAS) LIMITED
Huntlaw Building
Fort Street
George Town, Grand Cayman
Cayman Islands, British West Indies,

ICIC HOLDINGS LIMITED
Huntlaw Building
Fort Street
George Town, Grand Cayman
Cayman Islands, British West Indies,

INTERNATIONAL CREDIT AND INVESTMENT
COMPANY (OVERSEAS) LIMITED
Huntlaw Building
Fort Street
George Town, Grand Cayman
Cayman Islands, British West Indies,

-and-

CREDIT AND FINANCE COMPANY LIMITED,
Huntlaw Building
Fort Street
George Town, Grand Cayman
Cayman Islands, British West Indies,

Plaintiffs

v.

ABDUL RAOUF HASAN KHALIL
Post Office Box 14032
Jeddah, Saudi Arabia 21424

-and-

SYED ZIAUDDIN ALI AKBAR
c/o Her Majesty's Prison
Bullingdon near Abingdon
Oxfordshire, England

-and-

CAPCOM FINANCIAL SERVICES LIMITED
107 Grays Inn Road
London, England WCIX 8TZ

-and-

CAPCOM FUTURES INCORPORATED
Registered Agent:
Syed N. Hassan
64 West Pier Drive
Suite 201
Westmont, Illinois 60559
and

Serve:
Illinois Secretary of State
17 North State
Chicago, Illinois 60602

Defendants.

COMPLAINT
C.A. No. 95-____

(Civil RICO and RICO Conspiracy, Fraud, Conversion and Unjust Enrichment)

Plaintiffs BCCI Holdings (Luxembourg), Societe Anonyme ("BCCI Holdings"), Bank of Credit and Commerce International, Societe Anonyme ("BCCI SA"), Bank of Credit and Commerce International (Overseas) Limited ("BCCI Overseas"), ICIC Holdings Limited ("ICIC Holdings"), International Credit and Investment Company (Overseas) Limited ("ICIC Overseas"), and Credit and Finance Company Limited ("CFC"), by and through their Court Appointed Fiduciaries, bring this complaint against Abdul Raouf Hasan Khalil, Syed Ziauddin Ali Akbar, Capcom Financial Services Limited ("Capcom UK") and Capcom Futures Incorporated ("Capcom US").

NATURE OF ACTION

1. This action alleges civil RICO and RICO conspiracy violations, as well as related common law torts, against defendants based on defendants' actions to defraud plaintiffs and their innocent creditors and depositors, through misrepresentations to plaintiffs and U.S. and foreign regulators, and through other illegal activities, beginning in or around 1977 and continuing until the present.

2. The Complaint details a conspiracy wherein defendants conspired to divert hundreds of millions of dollars from

plaintiffs through numerous fraudulent and extortionate transactions.

3. As part of their scheme, defendants conspired with corrupt former management of plaintiffs to manipulate plaintiffs' balance sheets to conceal large losses and to conceal fraudulent activity by plaintiffs' senior management. Thus, Khalil agreed to serve (a) as a nominee shareholder of BCCI Holdings shares in order falsely to inflate the BCCI Group's apparent capitalization in order to support a larger book of delinquent loans and other bad investments; and (b) as a nominee shareholder in Credit and Commerce American Holdings, N.V., ("CCAH"), the ultimate parent of Washington, D.C.-based First American Bankshares, in order to conceal from bank regulators plaintiffs' secret ownership of First American.

In addition, defendants agreed to manipulate the books of plaintiffs by (a) routing transactions through accounts in the name of Khalil to conceal losses and generate false profits on BCCI Group balance sheets; (b) using Khalil's accounts to hide risky and unprofitable investments in commodities, options and futures undertaken by corrupt management of the BCCI Group under guaranteed no-risk arrangements for Khalil; and (c) undertaking illegal and fraudulent property transactions in order to inflate profits by generating fictitious income and overstating the assets of the BCCI Group.

4. As part of their scheme, defendants Akbar and Khalil also conspired (a) to create a brokerage company, defendant Capcom UK and its United States subsidiary, Capcom US, financed primarily by capital diverted from plaintiffs, which permitted defendants to profiteer on BCCI Treasury trading and convert plaintiffs' funds to their own use; and (b) to extort money from plaintiffs in exchange for defendants' silence concerning plaintiffs' losses and corrupt former management's fraudulent activities.

5. As a result of the conspiracy between defendants and others, in excess of $100 million in plaintiffs' funds were diverted from plaintiffs for the benefit of defendants and others in fraud of plaintiffs, their creditors and depositors and U.S. regulators.

JURISDICTION AND VENUE

6. This action arises under the laws of the United States, including the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961, *et seq.*, the laws of the several states and the District of Columbia.

7. Subject matter jurisdiction in this Court is proper pursuant to 18 U.S.C. § 1964(c) and 28 U.S.C. §§ 1331 and 1367.

8. Personal jurisdiction over defendants in this Court exists pursuant to 18 U.S.C. § 1965(d) and D.C. Code § 13-423 (a).

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b)(2) and (d) and 18 U.S.C. § 1965 (a) and (b).

THE PARTIES AND OTHER RELEVANT PERSONS

Plaintiffs

10. "BCCI Group" refers collectively to BCCI Holdings and its two principal operating subsidiaries, BCCI SA and BCCI Overseas .

11. BCCI Holdings was at relevant times a holding company incorporated under the laws of Luxembourg.

12. BCCI SA was at relevant times a banking corporation organized under the laws of Luxembourg.

13. BCCI Overseas was at relevant times a banking corporation organized under the laws of the Cayman Islands.

14. ICIC Overseas was at relevant times a banking corporation organized under the laws of the Cayman Islands and

was a subsidiary of ICIC Holdings. The affairs of ICIC Overseas were largely directed by Agha Hasan Abedi and Swaleh Naqvi and persons acting under their direction.

15. ICIC Holdings is a corporation organized under the laws of the Cayman Islands. The affairs of ICIC Holdings were largely directed by Agha Hasan Abedi and Swaleh Naqvi and persons acting under their direction.

16. CFC was at relevant times a banking corporation organized under the laws of the Cayman Islands and is a wholly-owned subsidiary of BCCI Holdings. The affairs of CFC were largely directed by Agha Hasan Abedi and Swaleh Naqvi and persons acting under their direction.

17. At relevant times, BCCI SA and BCCI Overseas operated a coordinated international banking network which at its peak had more than 400 branches in more than seventy countries.

18. BCCI Holdings, BCCI SA, BCCI Overseas, ICIC Overseas and CFC had their operations taken under control by banking regulators in Luxembourg, the Cayman Islands, the United Kingdom, the United States and elsewhere on or about July 5, 1991. Each of the plaintiff corporate entities has been placed under court-supervised liquidation.

19. The "Liquidators of BCCI Holdings" refers to Georges Ravarani, appointed on September 18, 1992, and Jacques Delvaux, appointed on October 14, 1993, by the District Court in Luxembourg. Pursuant to Luxembourg law, the Liquidators of BCCI Holdings are empowered by the Court to sue on behalf of BCCI Holdings and on behalf of the creditors of that corporation for the benefit of the liquidation estate.

20. The "Liquidators of BCCI SA" refers to Georges Baden, Julien Roden and Brian Smouha, appointed by the District Court in Luxembourg on January 3, 1992. Pursuant to

Luxembourg law, the Liquidators of BCCI SA are empowered by the Court to sue on behalf of BCCI SA and on behalf of the creditors and depositors of that corporation for the benefit of the liquidation estate.

21. The "Liquidators of BCCI Overseas" refers to Ian A.N. Wight, Robert E. Axford and Michael W. Mackey, appointed by the Grand Court of the Cayman Islands on January 14, 1992. Pursuant to Cayman Islands law, the Liquidators of BCCI Overseas are empowered by the Court to sue on behalf of BCCI Overseas and on behalf of the creditors and depositors of that corporation for the benefit of the liquidation estate.

22. The "Liquidators of ICIC Holdings" refers to Ian A.N. Wight, Robert E. Axford, Michael W. Mackey and Richard E. Douglas, appointed by the Grand Court of the Cayman Islands on July 9, 1993. Pursuant to Cayman Islands law, the Liquidators of ICIC Holdings are empowered by the Court to sue on behalf of ICIC Holdings and on behalf of the creditors and depositors of that corporation for the benefit of the liquidation estate.

23. The "Liquidators of ICIC Overseas" refers to Ian A.N. Wight, Robert E. Axford and Michael W. Mackey, appointed by the Grand Court of the Cayman Islands on April 29, 1992. Pursuant to Cayman Islands law, the Liquidators of ICIC Overseas are empowered by the Court to sue on behalf of ICIC Overseas and on behalf of the creditors of that corporation for the benefit of the liquidation estate.

24. The "Liquidators of CFC" refers to Ian A.N. Wight, Robert E. Axford and Michael W. Mackey, appointed by the Grand Court of the Cayman Islands on January 14, 1992. Pursuant to Cayman Islands law, the Liquidators of CFC are empowered by the Court to sue on behalf of CFC and on behalf of the creditors of that corporation for the benefit of the liquidation estate.

25. For purposes of this complaint:, the "Court Appointed Fiduciaries" refers, collectively, to the Liquidators of BCCI Holdings, BCCI SA, BCCI Overseas, ICIC Overseas, ICIC Holdings and CFC.

Defendants

26. Defendant Abdul Raouf Hasan Khalil ("Khalil") is a citizen of Saudi Arabia. He has served as Executive Administrator to the Chief of Intelligence and as Deputy Chief of Intelligence for Saudi Arabia. Khalil became a record shareholder of BCCI Holdings in 1979 and continues to hold shares in BCCI Holdings to this day. Khalil was, in whole or in part, a nominee shareholder in BCCI Holdings, receiving non-recourse advances from plaintiffs or related companies to purchase some or all of his shares in BCCI Holdings .

27. Khalil became a record shareholder of CCAH, the ultimate parent of First American Bankshares, Inc., in 1982 and remains a record shareholder to this day. Khalil held his CCAH shares as a nominee for the corrupt former management of the BCCI Group, having received non-recourse advances from plaintiffs to purchase such shares. Khalil has been charged with violations of U.S. banking laws by the Board of Governors of the Federal Reserve System in connection with his nominee ownership of shares in CCAH.

28. Khalil was a shareholder and director of Capcom UK from 1984 to 1988. Khalil's shareholding was financed, directly or indirectly, by plaintiffs. Khalil also maintained an undisclosed ownership interest through nominees in Capcom US.

29. Defendant Syed Ziauddin Ali Akbar ("Akbar") is a citizen of both the United Kingdom and Pakistan. He was employed by the BCCI Group from 1976 to 1986, and served as the head of the Treasury Division from 1982 to 1986. In

that capacity, Akbar was responsible for managing and investing available liquid funds of the BCCI Group. In addition, Akbar was the officer responsible for the accounts of certain major customers of the BCCI Group, including Khalil. From 1984 onwards, Akbar controlled the affairs, directly or indirectly, of Capcom UK and Capcom US.

30. Defendant Capcom UK is a United Kingdom corporation first incorporated in April 1984. Capcom UK was financed directly or indirectly by plaintiffs. Its nominal business purpose was to engage as a broker-dealer in futures, options and commodities. Capcom UK has been fined and suspended from certain trading activities by regulators in England. It continues to operate in London, principally as a dealer in foreign exchange.

31. Defendant Capcom US is an Illinois corporation which was incorporated in 1985 and at all times relevant hereto was a subsidiary and/or under the control of Capcom UK and/or the persons who owned or controlled Capcom UK, including Akbar and Khalil. Capcom US's nominal business purpose was to engage in brokerage in futures, options and commodities on the Chicago exchanges. Capcom US was financed directly or indirectly by plaintiffs.

32. Capcom US has been fined and suspended by regulators in the United States, as a result of which it has ceased trading. Capcom US filed voluntary articles of dissolution with the Secretary of State of Illinois on April 16, 1992, and under Illinois law remains liable to suit for five years thereafter.

33. Akbar and Capcom UK, along with others, have been indicted twice in the United States. Indictments were issued on October 10, 1988 and on August 23, 1991, by grand juries in the United States District Court for the Middle District of Florida for money laundering, racketeering and other offenses.

34. To date, neither Akbar nor Capcom UK has appeared to answer these U.S. criminal charges and both remain fugitives from justice. Akbar is presently incarcerated in England. He may be released as early as fall 1995.

35. On April 30, 1992, the U.S. District Court for the Middle District of Florida issued an order declaring Capcom UK in contempt of court for its failure to appear to answer the criminal charges contained in the August 23, 1991 indictment. The Court imposed a fine of $5,000 per day on Capcom UK, which continues to accrue.

Other Relevant Persons

36. Agha Hasan Abedi was the principal and founder of the BCCI Group and served as its top corporate officer from 1973 until in or about February 1988, when he suffered a heart attack and was succeeded in that position by Swaleh Naqvi. Despite his ill health, Abedi remained an officer and director of the BCCI Group until in or about October 1990. On July 29, 1991, November 15, 1991, and July 29, 1992, Abedi was indicted by New York and federal grand juries on charges stemming from his role in the illegal acquisition of First American Bankshares, Inc. Abedi lives in Karachi, Pakistan, where he is a fugitive from justice.

37. Swaleh Naqvi was a principal officer of the BCCI Group and served as its principal assistant corporate officer from 1973 through 1988. From 1988 until in or about October 1990, Naqvi was the top corporate officer of the BCCI Group. From October 1990 through approximately July 1991, Naqvi served as an advisor to the management of the BCCI Group. On July 29, 1991, November 15, 1991, and July 29 1992, Naqvi was indicted by New York and federal grand juries on charges, *inter alia*, stemming from his role in the illegal acquisition of First American Bankshares, Inc. On July 8, 1994, Naqvi pleaded guilty to a federal information and was

thereafter sentenced to more than 11 years in federal prison. He is presently a prisoner in federal custody.

38. At times relevant hereto, Abedi and/or Naqvi largely directed the affairs of plaintiffs in a secretive and deceptive manner, engaging in numerous illegal actions and conspiracies with defendants and others, in fraud of United States regulators and foreign regulators as well as plaintiffs and their innocent depositors and creditors. In engaging in the illegal actions described herein with the defendants and others, Abedi and Naqvi were acting beyond the scope of their actual or apparent authority, in breach of their fiduciary duties, and in all ways adverse to the interest of plaintiffs as corporate entities and their depositors and creditors.

39. CCAH is a Netherlands Antilles corporation. CCAH was a bank holding company within the meaning of the Bank Holding Company Act, 12 U.S.C. § 1841, *et seq.* Credit and Commerce American Investment B.V. ("CCAI") is a Netherlands corporation and a wholly-owned subsidiary of CCAH. CCAI was a bank holding company within the meaning of the Bank Holding Company Act, 12 U.S.C. §1841, *et seq.* CCAH and its wholly-owned subsidiary, CCAI, were formed in 1978 to acquire control and ownership of Financial General Bankshares, Inc. ("FGB"), a Virginia corporation and a bank holding company within the meaning of the Bank Holding Company Act, 12 U.S.C. § 1841, *et seq.* FGB was subsequently renamed First American Bankshares, Inc. ("FAB").

FACTS COMMON TO ALL COUNTS

40. At all relevant times, until regulators seized the operations of plaintiffs and brought them under court-supervised control and the Court Appointed Fiduciaries were appointed, plaintiffs were adversely dominated by corrupt former senior management and directors, who, in conjunction

with defendants, engaged in certain of the harmful acts described herein.

41. The schemes set forth in this complaint were carried out by the defendants by means of the following acts and transactions.

A. Initial Relationship Between Khalil, Akbar and the BCCI Group

42. Prior to 1976, Akbar was employed by National Bank of Oman, a BCCI Group affiliate. During his tenure at National Bank of Oman, Akbar first met and developed a business relationship with Khalil.

43. In 1976, Akbar was transferred from National Bank of Oman to the BCCI Group headquarters at 100 Leadenhall Street, London, England, where he became an officer in the BCCI Group's treasury section. After his transfer to London, he cultivated Khalil as a customer of the BCCI Group and as a co-conspirator.

44. In late 1977, Akbar traveled to Saudi Arabia to meet with Khalil. He was accompanied by Naqvi, who requested that Akbar persuade Khalil to agree to serve as a nominee owner of BCCI Holdings shares. During subsequent meetings with Khalil, Akbar also requested that Khalil agree to serve as a nominee for the BCCI Group with respect to other transactions. Khalil agreed to these requests.

45. Over the next decade, Khalil and Akbar developed a close, mutually beneficial working relationship whereby they engaged in numerous, financial transactions, both legal and illegal, for profit.

46. Beginning in or around 1977 and continuing thereafter, Khalil, Akbar, Abedi and Naqvi conspired to use Khalil's name to conceal ownership of certain assets and to create fictitious income on the books of the BCCI Group. Akbar

confirmed to Khalil that his name was being so used, and that substantial false profits were being shown on the BCCI Group's books through the use of Khalil's name in numerous and large transactions.

47. As a means of disguising their scheme, Khalil authorized Akbar to sign Khalil's name to documents authorizing and recording the financial transactions, so Khalil could thereafter disclaim responsibility if it suited his purposes, claiming that his signature had been forged. Khalil was informed, and agreed, that he need not concern himself with the details of particular transactions because he would be held harmless from loss by Abedi and Naqvi and would be well compensated for acting as a nominee.

B. Real Estate Transactions

48. Khalil's service as a nominee began with certain transactions involving the purchase and/or sale of real estate. Akbar, Naqvi and others caused properties to be purchased in the name of Khalil or Khalil-affiliated companies, using BCCI Group funds to make the purchases. These funds were recorded in the BCCI Group's books as proceeds of loans to Khalil, thereby falsely creating the appearance that Khalil was responsible to repay the funds advanced. When Abedi, Naqvi and Akbar needed to create fictitious income, *inter alia*, to assure regulators of the BCCI Group's financial soundness, the property would be "sold" to another Khalil-affiliated company, with the "purchase" being financed by other BCCI Group funds, the original Khalil "loan" repaid with "interest," and a new fictitious "loan" booked by the BCCI Group for the purchasing Khalil-affiliated company. In addition, the new loan would carry a rate of interest at least as high, and usually higher, than the previous loan, and would also enable the BCCI Group to book additional income in the form of origination fees.

49. Khalil, Akbar, Naqvi, Abedi and others participated in numerous such property transactions, including purchases of property in London, Panama, Hong Kong and elsewhere in the world.

50. The effect of these fraudulent property transactions was artificially to inflate the BCCI Group's books and records by falsely showing millions of dollars in performing loans, when in fact the loans were non-performing. In addition, the manipulation recorded false income on the BCCI Group's books, disguising the BCCI Group's unsound financial condition in fraud of plaintiffs and their regulators, creditors and depositors.

C. Purchase of BCCI Holdings Shares

51. From at least June 1980 until the present, Khalil served as a nominee shareholder of BCCI Holdings. Khalil, Akbar, Naqvi and Abedi agreed that Khalil would not be required to pay for any shares acquired in his name and that all share purchases would be financed by funds appropriated from plaintiffs. In exchange for his agreement to serve as a nominee shareholder, Abedi and Naqvi agreed that Khalil would be given a portion of the shares beneficially, as well as of record, in a no-risk arrangement. The remainder of the shares would be held by Khalil on a nominee basis at the direction of Abedi and Naqvi.

52. The effect of Khalil's nominee shareholding was falsely to inflate the BCCI Group's share capital in deceit of regulators and in fraud of plaintiffs and their depositors and creditors.

53. Khalil's shareholding, which at times exceeded 2 million shares, was acquired for him through a series of fraudulent purchases intended to disguise the fact that Khalil did not fund these purchases but that BCCI Holdings, through

related companies, was funding its own share capital. *See* ¶ 191 (i)-(vi), (xi) and (xii).

54. To perpetuate these fraudulent purchases, Akbar, in cooperation with Abedi and Naqvi, created or directed the creation of debit entries in accounts in Khalil's name in the BCCI Group's records. These transactions were fraudulent in that Khalil and Akbar knew that no repayment by Khalil was expected.

55. Khalil held his BCCI Holdings shares pursuant to separate side agreements, dated October 1979 and June 1980, which reflected that his purchase of BCCI Holdings shares would be for a fixed period of three years, with a guaranteed return to Khalil of at least 1/2% above LIBOR in accumulated stock and cash dividends over the three-year period. If the income were less than the guaranteed amount, ICIC Holdings was required to pay Khalil the difference. However, if appreciation in the value of the shares exceeded this guaranteed rate of return, Khalil was entitled to be paid these additional amounts. In addition, the side agreements required ICIC Holdings to repurchase the shares at their issued price after three years.

56. On or about August 7, 1981, Khalil acknowledged receipt of a letter from ICIC Overseas certifying that it held on his behalf 40,000 BCCI Holdings shares. Khalil also acknowledged receipt of deposit statements from Akbar.

57. On or about May 31, 1985, Khalil countersigned a schedule giving details of BCCI Holdings shares registered in his name. The schedule lists the value of the shares held as of April 1, 1985, at $40 per share, the total "loans" outstanding, and the net "profit" as of May 31, 1985. As a result of stock dividends and the purchase of rights shares, Khalil was record owner of 1,559,837 shares in BCCI Holdings of which 955,003 were identified as nominee shares.

58. In a letter dated May 9, 1986, Khalil acknowledged the nominee arrangement with respect to the BCCI Holdings shares and further admitted that he had received funds from plaintiffs for his services as a nominee.

59. As set forth below, in 1987, after Akbar left the BCCI Group, Khalil met with Naqvi and extorted a $15 million and a $17 million payment from plaintiffs. In connection with that extortion, Khalil was paid for 715,559 shares that, as of December 31, 1986, were deemed by Abedi and Naqvi to be beneficially owned by Khalil. To perpetuate the fraudulent scheme, Khalil and Naqvi agreed that Khalil would remain the record owner of those shares, as well as the 1,129,832 he held in a nominee capacity. On April 18, 1990, a substantial portion of Khalil's shares was transferred to another shareholder. Khalil remains the record shareholder of 57,748 shares of BCCI Holdings.

ID. Nominee Ownership of CCAH Shares

60. Khalil, Akbar, Naqvi and Abedi also agreed that Khalil would act as a nominee owner of CCAH shares in violation of U.S. banking laws and in fraud of regulators, plaintiffs and their innocent depositors and creditors.

61. Akbar substantially assisted in the BCCI Group's takeover of FGB, which became First American Bankshares. In 1978, he prepared false financial statements for the initial nominee investors in FGB. In addition, Akbar arranged fictitious loans in the names of the nominees for the purpose of funding the initial share purchases.

62. On or about April 23, 1981, Khalil, Akbar and others travelled to Washington, D.C. for the purpose of making false representations to the Board of Governors of the Federal Reserve System as to the true ownership of the shares of CCAH. On April 23, 1981, Khalil met with Washington, D.C. attorneys Robert Altman and Clark Clifford in the District of

Columbia. Clifford and Altman prepared a statement on behalf of Khalil falsely stating that Khalil intended to fund his proposed purchase of CCAH shares from his own resources and that he would be the beneficial owner of the shares. Khalil approved this statement and it was submitted to the Board of Governors.

63. Khalil appeared before the Board of Governors posing as a prospective beneficial owner of CCAH. Khalil knew that he would have no beneficial interest in CCAH and his appearance was designed to and did deceive the Board of Governors as to the true ownership of CCAH.

64. Akbar travelled with Khalil to Washington on the same private airplane as the representative of the BCCI Group's management. However, because the BCCI Group's role had to remain secret, Akbar did not join the meeting that Khalil and others attended at the Board of Governors. The day after the meeting, Akbar and Khalil travelled together from Washington to London by scheduled flight. In the course of the flight, Khalil and Akbar discussed the CCAH investment in detail and Khalil referenced on multiple occasions that he was a nominee for the CCAH shares, that he knew that other shareholders were also nominees, that Abedi and Naqvi had assured him that he was at no financial risk and that he would be well compensated for serving as a nominee.

65. In order to effect the fraudulent nominee ownership scheme and to conceal the fact that corrupt management of the BCCI Group had caused plaintiffs to finance Khalil's interest, on or about March 2,1982, $14,832,000, representing consideration for the initial subscription of 8.24% of the shares of CCAH to be placed in the name of Khalil, was routed from a new loan account at BCCI Overseas to United Overseas Bank, Geneva, and credited to the account of another nominee investor in CCAH. The $14,832,000 for

Khalil's shares was then remitted along with other funds back to BCCI Overseas and was used to acquire Khalil and other nominees' shares.

66. Khalil knew of and approved the routing of the funds from BCCI Overseas through United Overseas Bank to the CCAH subscription account at Bank of New York. The purpose of this circuitous routing through United Overseas Bank was to create the false impression that the source of the funds was from outside the BCCI Group.

67. On or about March 24, 1982, $137.2 million, including the $14,832,000 financed by the BCCI Group for the purchase of Khalil's shares, was transferred by wire from BCCI Overseas' account at Bank of New York to CCAH's account at Chase Manhattan Bank in New York.

68. As a result of these transactions in 1982, Khalil became the record owner of 8.24% of CCAH. As a result of their actions in concert with Abedi, Naqvi, and other nominee owners of CCAH, Khalil and Akbar caused plaintiffs to have control, directly or indirectly, of more than 25 per cent of the voting shares of CCAH, without having obtained the prior approval of the Federal Reserve, in violation of the Bank Holding Company Act.

69. Through these and similar acts described below, Khalil, Akbar, Abedi, Naqvi and others were participants in a conspiracy illegally to acquire and maintain ownership of CCAH with funds provided by plaintiffs and financed by the assets of their respective innocent depositors and creditors.

70. CCAH subsequently issued 16,700 shares of additional stock dated as of August 27, 1982, at a price of $1,800 per share, to raise $30,060,000, used to purchase the remaining Class A shares of FAB, thereby making FAB a wholly-owned subsidiary of CCAH.

71. On or about August 27, 1982, Akbar created a fraudulent loan in the name of another nominee in the amount of $12,060,000. These funds were used in part to purchase 1,667 CCAH rights shares in the name of Khalil.

72. On or about August 27, 1982, Akbar caused the wiring of this $12,060,000 via BankAmerica International New York, to Chase Manhattan Bank in New York for the credit of CCAH's account.

73. The disbursement of these funds by Akbar and the acceptance of these shares by Khalil constituted a direct violation of the representations described in ¶¶ 62 to 64 made by Khalil and on his behalf to federal bank regulatory authorities.

74. The sham allocation of shares in the 1982 rights offering to Khalil was part of a continuing conspiracy illegally to acquire and maintain ownership of CCAH with funds provided by plaintiffs and financed by the assets of their innocent depositors and creditors.

75. In December 1983, 39,375 rights shares of CCAH were issued to raise approximately $75 million in new capital. As before, Khalil's allocation of these rights shares were funded by plaintiffs.

76. On or about October 28, 1983, Naqvi directed that ICIC Overseas remit a payment of $36,492,180 on November 1, 1983, to FAB-New York's account at the State Bank of Albany. Naqvi and Akbar instructed BCCI Overseas and ICIC Overseas to create fictitious loan accounts in support of this payment in the names of Khalil and other nominee shareholders.

77. On or about November 1, 1983, loan account A/c 80155 was created at the direction of Naqvi at ICIC Overseas and funds totalling $6,368,415 were drawn down to purchase 3,343 CCAH shares in the 1983 rights issue. The shares were

registered in the name of Khalil on December 22, 1983. The $6,368,415 payment was aggregated with payments for other nominee shareholders and wired to FAB-New York's account at State Bank of Albany on November 1, 1983.

78. When the time came to allocate shares for the 1986 rights issues, a further loan was created in Khalil's name at BCCI Overseas. As noted , however, by this time Akbar had resigned from the BCCI Group and had warned Khalil of the financial condition of the Group. At Akbar's suggestion, Khalil informed Abedi and Naqvi that he did not wish to continue to serve as a nominee. The 5,747 CCAH shares that were to be funded by the loan created in Khalil's name were instead registered in the name of another nominee, Mohammed Hammoud, and were never registered in the name of Khalil. The fictitious loan in the name of Khalil was reduced on August 29, 1986, and repaid on September 30, 1986, through the creation of a loan in the name of Hammoud.

79. On or about August 18, 1987, the 2,803 rights shares to which Khalil was entitled were waived in favor of Hammoud pursuant to an undated letter of waiver that Khalil had signed in blank in or around June or July 1987. *See* ¶ 151.

80. Khalil's shareholding in CCAH was never transferred out of his name.

81. On July 24, 1993, the majority of assets of First American Bankshares were sold by a court-appointed trustee for an amount in excess of $450 million.

82. On December 21, 1994, the proceeds of sale attributable to the nominee shareholdings of Khalil and others in CCAH were ordered forfeit to the United States as property of the BCCI Group and ICIC Overseas.

83. Khalil had notice of the forfeiture but did not challenge the forfeiture order.

E. The Fraudulent Use of Khalil's Deposits and Accounts

84. In or around 1977, Khalil began making substantial deposits with plaintiffs. Khalil granted Akbar authority to operate Khalil's accounts at the BCCI Group and ICIC Overseas. There were deposit balances with plaintiffs in Khalil's name or the names of his companies in amounts which reached in excess of $100 million.

85. At the time the deposits were made, Khalil, Akbar, Naqvi and Abedi agreed that these deposits would not be treated simply as ordinary interest-bearing accounts but would, in addition, be used for funding commodities, options and futures trading or property deals by the BCCI Group. Khalil would receive interest on the deposits and, in addition, would receive a portion of any profits received on the trading. The BCCI Group would be responsible for any losses incurred in the trading. In essence, Khalil, Akbar, Abedi and Naqvi had agreed on an arrangement that would provide no-risk guaranteed profits to Khalil and permit corrupt management secretly to engage in high risk activities under the fiction that they were engaged in client trading.

86. Khalil also agreed with Akbar that Akbar would create false loan accounts in the name of Khalil and in the names of companies affiliated with Khalil and controlled by Akbar. Through these accounts, Akbar conducted numerous transactions to conceal the true financial condition of the BCCI Group, including, *inter alia*, the booking of phantom income on property transactions; the booking of phantom commissions, charges and fees and the concealment of losses on commodities, futures and options trading; and the adjustment and consequent concealment of non-performing loans within the BCCI Group. Khalil agreed to such use of his accounts and was informed by Akbar and others on a number of occasions that his accounts were being so used for

numerous and substantial transactions. Khalil agreed to this arrangement, as well as other nominee arrangements herein described, on the express agreement that he would be held harmless from loss and that he would receive substantial payments for his assistance in facilitating and concealing the massive fraud being perpetrated by the BCCI Group's corrupt former management.

87. In addition to the above arrangement, Khalil agreed to permit Akbar to do trading on Khalil's behalf separate from his banking relationship with the BCCI Group. Akbar hired an employee, Nasim Siddiqi, who conducted a joint trading operation for the benefit of Khalil and Akbar from Khalil's residence at 4 Moncorvo Close, London. The residence had been purchased for Khalil by the creation of an overdraft in the name of Khalil at BCCI SA London. In or around the summer of 1981, during a period in which Khalil was resident at the Moncorvo Close house, Siddiqi suggested to Khalil that Akbar and the BCCI Group were mismanaging trading activities engaged in with Khalil's funds.

88. In response to Siddiqi's criticisms, on or about July 19, 1981, Khalil instructed Abedi and Naqvi to cancel all previous instructions to permit BCCI Group personnel to operate current and deposit accounts in his name at the BCCI Group. The letter specified that all future payments would require prior written authorization signed by him in both Arabic and English and that copies of bank statements were to be forwarded to him each month. In a separate letter, Khalil acknowledged receipt of his account statements but claimed that they contained errors "which are causing considerable problems for verification with my partners." Khalil's account statements reflected substantial debits for the numerous fictitious loans which had been created in his and his companies' names.

89. In late July 1981, after the receipt of this letter, Akbar and Naqvi met with Khalil at the Moncorvo Close house in London. At the meeting, Akbar and Naqvi apologized for showing the debit balances on Khalil's current accounts and reconfirmed that Khalil would not be held accountable for the transactions undertaken in his name or for any losses. They assured him that the trading done on his behalf was successful, and, as proof of that success, Naqvi and Akbar presented Khalil with a $2 million check. The $2 million payment did not represent genuine profits but instead constituted BCCI Group funds paid to Khalil at the direction of Naqvi and Akbar in order to secure his continued participation in the fraudulent schemes alleged herein.

90. On or about July 30, 1981, Akbar sent a letter to Khalil concerning the debit balances in his accounts and providing the requested assurances to Khalil that there were no loans outstanding in Khalil's name or in the names of his companies.

91. Having received these assurances, on August 7, 1981, Khalil wrote to Akbar acknowledging receipt of deposit statements from Akbar and also enclosing an authority letter permitting Akbar to again operate Khalil's accounts, thereby allowing the fraudulent scheme to continue.

92. In or around December 1983, Akbar booked substantial false futures trading profits and metal warrant trading profits on the books of BCCI Treasury, using fictitious trades with Euro Commodities Limited ("Euro Commodities"), a sham entity created and controlled by Akbar. Akbar printed stationery and forms and rented space for this illusory operation, which made no market trades, but was simply used to document purported trades in order to create the false appearance of profits to show on the books of the BCCI Group. Euro Commodities recorded substantial commissions on this phantom trading.

93. In or around December 1984, Akbar again falsified the BCCI Group's books by recording substantial false futures trading profits and metal warrant trading profits, again using Euro Commodities. Once again, Euro Commodities recorded substantial commissions on this phantom trading.

94. As part of the falsification of the BCCI Group's books, on or about November 1, 1983 and December 15, 1983, Akbar arranged for two loans of $20 million each to be secured from the State Bank of India in the name of Notan Trading and Investments Limited ("Notan"), an Akbar controlled company registered in Liechtenstein. Prior to the draw down of each loan, Akbar caused the BCCI Group to place an identical sum with the State Bank of India as a deposit. Although the Bank of India held the deposits as security for the loans to Notan, Akbar did not record the encumbrance of the funds, thereby concealing the true nature of the transactions. These back-to-back loans allowed Akbar to represent the proceeds of the loans as receipts for the credit of Khalil affiliated loan accounts, and thereby recharacterize the BCCI Group's own funds as having been received from Khalil. The loans were not repaid and the deposits were not released until after the BCCI Group's accounting year-end.

95. Similarly, on or about September 18, 1984 and December 18, 1984, Akbar arranged for loans of $75 million and $50 million respectively to be secured from another bank, the Bank of India, in the name of Maram Trading Company ("Maram"), a Khalil-owned company registered in Grand Cayman. Prior to the draw down of each loan, Akbar caused the BCCI Group to place an identical sum with the Bank of India as a deposit. Although the State Bank of India held the deposits as security for the loans to Maram, Akbar did not record the encumbrance of the funds, thereby concealing the true nature of the transactions. These back-to-back loans allowed Akbar to represent the proceeds of the loans as receipts for the credit of Khalil-affiliated loan accounts, and

thereby recharacterize the BCCI Group's own funds as having been received from Khalil. The two loans were not repaid and the deposits were not released until after the BCCI Group's interim audit and accounting year-end, respectively.

96. In or about August 1985, Khalil and Akbar met in London. They agreed that Khalil would be paid $12.5 million of BCCI Group funds for his participation in the phantom trading scheme. Akbar drafted a letter for Khalil's signature specifying that the payments were for past and future trading profits. The letter illustrated the transparency of the arrangement, as future profits from trading could not be determined in advance. Khalil instructed Akbar to delete terms in the letter that gave Akbar authority to draw loans in the name of Khalil and that provided that a portion of the payment was for profits on Khalil's BCCI Holdings shares (which were covered by separate side agreements described above in ¶ 55). With these amendments, on or about August 16, 1985, Khalil signed the letter agreement and, on or about August 20, 1985, received the $12.5 million payment by a check drawn on BCCI SA's account at BankAmerica International in New York.

97. Thereafter, in or around March 1986, Akbar resigned from the BCCI Group and advised Khalil of the extent of the BCCI Group's losses. Akbar suggested that Khalil withdraw the funds deposited in his name. On May 6, 1986, Khalil instructed the BCCI Group to transfer deposits in his name to Allied Arab Bank, London with a value date of May 9, 1986. Khalil directed that $87,022,583.34 be paid to Citibank NA, New York for the credit of Account No. 36010841 in the name of Allied Arab Bank, in favor of Museum Trust SA, a company controlled by Khalil. This transfer was made by wire on or about May 9, 1986. In addition, Khalil instructed that £3,000,000 be paid to Allied Arab Bank, London by Bankers Payment. These funds represented, in part, payments

by plaintiffs to Khalil for his agreement to serve as a nominee for the BCCI Holdings shares.

98. In addition to the other payments outlined above, Khalil received substantial payments of interest on his deposits.

F. The Siphoning of BCCI Group Funds Through Capcom

99. In or around 1983, Akbar (who was then head of BCCI's Treasury operations), in conspiracy with Khalil and others, decided that large commissions could be made on the voluminous trading business done by BCCI Treasury through the creation of a separate brokerage company to handle the BCCI business. Akbar fraudulently diverted funds from plaintiffs to finance this brokerage company, which was called Capcom Financial Services Limited ("Capcom UK") . Subsequently, Akbar and Khalil also agreed to use Capcom UK as a conduit to disguise BCCI Group losses and to create the appearance of profits to the BCCI Group through sham commodities, options and futures trading. In addition, millions of dollars of BCCI Group funds were moved through Capcom UK to facilitate the falsification of the BCCI Group's books with no legitimate commercial purpose.

100. Despite remaining an employee of the BCCI Group until March 1986, Akbar began operating Capcom UK in October 1984, using his authority as the head of BCCI Treasury to place the majority of the Treasury trading activities through Capcom UK. Khalil became a shareholder and director of Capcom UK. From 1984 onwards, Akbar and Khalil converted BCCI Group funds which they used substantially to finance the share capital of Capcom UK and siphoned off more than $100 million of BCCI Group funds which they caused to be "advanced to" or "invested with"

Capcom UK. These funds were never returned to the BCCI Group.

1. The Capitalization of Capcom

101. The first major capitalization of Capcom UK occurred on June 1, 1984, when the share capital was increased from £2 to £1,000,000. Of this amount £790,000 was transferred to Capcom UK from BCCI Group accounts in the name of Khalil and/or his affiliated companies. These accounts were not Khalil's own deposits but rather were BCCI Treasury accounts maintained in Khalil's name and operated by Akbar to route funds within the BCCI Group to create a false picture of financial solvency of the BCCI Group.

102. In addition, £85,000 was transferred from accounts at the BCCI Group in the names of Notan Trading and Investments Limited and Consolidated International Securities, Inc., two Akbar controlled companies whose accounts were used by Akbar to route BCCI Group funds and to manipulate the BCCI Group's balance sheet at year-end.

103. In all, BCCI Group funds were used to purchase at least 87.5% of the issued share capital of Capcom UK.

104. On or about August 20, 1984, Capcom UK was admitted to the London International Financial Futures Exchange, and on or about September 17, 1984, Capcom UK commenced trading.

105. Between October 1984 and June 1985, Capcom UK raised approximately £24 million pounds of additional capital, the vast majority of which was fraudulently and secretly financed from funds of the BCCI Group. These funds were raised through the issue by Capcom UK of subordinated convertible loan stock which raised £3,000,000, calls on partly-paid shares in 1984 which raised a total of £9 million, and a 1985 rights issue which raised £12 million.

106. On or about November 9, 1984, Akbar diverted £2,250,000 originating from the BCCI Treasury accounts held in the name of Khalil to Capcom UK. These funds were used to purchase 75% of the value of the subordinated convertible loan stock.

107. On or about June 17, 1985, funds totalling £16.95 million were transferred from a BCCI Overseas deposit account held in the name of Khalil (but representing the BCCI Group's own funds) to Paten Holdings, Inc. ("Paten"). These funds were used to satisfy the calls on the 1984 rights issue and the entire 1985 rights issue.

108. Paten had been incorporated in Panama as a bearer-share company. Paten "loaned" the funds required to pay for the Capcom UK stock to each of the Capcom UK shareholders (including Khalil) on a non-recourse basis with the shares of Capcom UK to be held as security. A principal function of Paten was to receive funds from the BCCI Group and "loan" them to Khalil and the other shareholders of Capcom UK.

109. On or about June 24 1987, Khalil, Akbar and others met in London and agreed that Paten was to be treated as beneficially owned by Khalil, despite the fact that it had been entirely financed by BCCI Group funds. In order to document this purported ownership, Khalil and Akbar went to Geneva where the registered agent for Paten, Cecile Ringgenberg, took steps to reflect Khalil as the beneficial owner and to execute new powers of attorney in respect of Khalil's ownership. The net effect of Khalil's obtaining ownership of Paten was that he became the beneficiary of the £16.95 million, which Akbar had fraudulently and secretly diverted from the BCCI Group. As set forth below, in ¶¶ 147 to 153, the conversion of the assets of Paten to Khalil's possession was part of a concerted pattern of extortion from plaintiffs undertaken by Akbar and Khalil in June and July 1987.

2. Fraudulent Transactions to Cycle Funds Between BCCI Group and Capcom

110. In addition to diverting funds from the BCCI Group into the share capital of Capcom UK, Akbar, Khalil and others also caused substantial other BCCI funds to be transferred to defendants.

111. From October to December 1984, funds totalling $100 million were transferred in eight separate wire transfers from Khalil accounts with BCCI Overseas to Capcom UK. These transfers were later characterized as an overdraft in the account of Maram Trading, a Khalil-owned company, at BCCI Overseas. This account contained BCCI Group funds and was used for other fraudulent transactions.

112. As of December 31, 1984, credit balances in Capcom UK in accounts ARKY2, ARKY8, and ARKY9 in the name of Khalil Investments, Inc., were in excess of $95 million. These amounts standing to the credit of Khalil's company represented BCCI Group funds which Akbar had diverted from BCCI Treasury accounts into Capcom UK.

113. On or about June 26, 1985, on the instructions of Akbar, funds totalling $82 million, in separate transfers of $68 million and $14 million, were drawn down from loan accounts in the names of nominees at BCCI Overseas and remitted to Capcom UK via Brenchase Limited ("Brenchase"), a wholly-owned subsidiary of Capcom UK. These funds were returned to the BCCI Group on June 27, 1985, and were then used to adjust and thereby conceal a number of delinquent loan accounts on BCCI's books. The transmission of these funds was effected for the sole purpose of disguising the routing of funds within the BCCI Group.

114. In or about August 1985, Abedi instructed Akbar to cease trading with Capcom UK after BCCI SA's auditors discovered the common shareholding between BCCI

Holdings (including Khalil) and Capcom UK. Because Akbar and Khalil wished to continue to make profits from BCCI Treasury trading, beginning in about September 1985, Akbar began to disguise BCCI/Capcom business by channeling such transfers through third-party brokers and Brenchase.

115. In or about October 1985, Khalil met with Abedi and Naqvi and requested that the BCCI Group resume trading with Capcom UK.

116. On or about October 25, 1985, £15.9 million was transferred via a third-party account to Capcom UK from an overdraft account at BCCI Overseas, A/C 01005524 in the name of Razat Associates Limited, another Khalil-controlled company. This overdraft was created by advancing BCCI Group funds. The Razat Associates account was controlled by Akbar, and was used for large volumes of trading in Sterling, in direct contravention of the formal cessation of trading between the BCCI Group and Capcom UK.

117. On or about January 9, 1986, at the instructions of Akbar, funds totalling $15 million were remitted from a Treasury account held in Khalil's name at BCCI Overseas, but representing BCCI Group funds, via Brenchase to Capcom UK. The routing through Brenchase was designed to conceal the transfer of BCCI Group funds to Capcom UK.

118. On or about February 18, 1986, funds totalling $2,569,103.94 were remitted from a Treasury account held in Khalil's name at BCCI , but representing BCCI Group funds, via Brenchase to Capcom UK. The routing through Brenchase was designed to conceal the transfer of BCCI Group funds to Capcom UK.

119. On or about March 4, 1986, funds totalling $50 million were raised through a repurchase transaction involving $50 million nominal 9% U.S. Treasury Notes with E F Hutton & Co. The funds generated by the transaction were remitted from ICIC Overseas to Capcom UK.

120. On or about March 13, 1986, an additional $50 million was raised through a repurchase transaction involving $50 million nominal 9% U.S. Treasury Notes with E F Hutton & Co. The funds generated by the transaction were remitted from ICIC Overseas to Capcom UK for further credit to Capcom UK A/c ARKY2, an account owned by Khalil Investments Limited.

121. Akbar directed that at least $50 million of the funds realized from the repurchase of these treasury notes be transferred back to the BCCI Group in "repayment" of outstanding loans in the names of Khalil and Khalil-related companies.

122. On or about March 17, 1986, Capcom UK remitted two checks for $49,476,774.27 and £1,076,803.84, which were applied to accounts at BCCI Overseas, pursuant to the instructions of Khalil Investments Inc. to debit of A/c ARKY2 in full and final discharge of balances held by Capcom UK for Khalil to the order of BCCI.

123. In a letter to Naqvi dated March 20, 1986, Akbar stated he was resigning from the BCCI Group. In a further letter to Naqvi, dated March 27, 1986, written in Urdu, Akbar stated that ill health and the "misunderstandings" that had arisen concerning Capcom, required that he leave BCCI Group employment. Despite Akbar's resignation, plaintiffs' funds continued to flow into Capcom UK.

124. On or about March 20, 1986, funds totalling $5,118,750 were paid by BCCI Overseas through the account of ICIC Overseas at Banque de Commerces et des Placements, Luxembourg (a BCCI Group affiliate) to Capcom UK. These funds were never repaid.

125. On or about April 1, 1986, a loan in ICIC Overseas was created in the amount of $15,467,000. These funds were remitted via BCCI Overseas to Capcom UK. These funds were never repaid.

126. On or about April 3, 1986, funds totalling $50,976,473.28 were paid by ICIC Overseas via Banque de Commerce et des Placements, Geneva (a BCCI Group affiliate) to Capcom UK. These funds were never repaid.

127. On or about June 25, 1987, funds totalling $17 million were paid from BCCI Overseas via Brenchase Limited to Capcom UK for the credit of the account of General Securities Corporation, a Panamanian company controlled by Akbar. These funds were paid as a result of extortionate conduct by Khalil and Akbar in June and July 1987. *See* ¶¶ 147 to 153. Akbar, on behalf of General Securities Corporation, confirmed receipt of the $17 million payment in a letter to Naqvi dated June 30, 1987. In order to disguise the nature of the transaction, Akbar characterized the payment in the letter as a three month placement by BCCI Overseas with General Securities Corporation. Akbar's letter to Naqvi referenced contemporaneous face-to-face discussions with both himself and Khalil leading to this payment.

128. On or about September 30, 1987, this purported $17 million placement by BCCI Overseas with General Securities Corporation's account at Capcom UK was repaid to BCCI Overseas from Libra Bank PLC by order of General Securities Corporation. The payment by Libra Bank PLC, however, was secretly guaranteed by BCCI Overseas.

129. On or about October 6, 1987, BCCI Overseas paid the $17 million back to the account of General Securities Corporation at Libra Bank PLC to repay the September 30, 1987 remittance in discharge of BCCI Overseas' secret guarantee obligation. In order to disguise this payment, it was later recharacterized on the books of the BCCI Group as if the funds had first been placed with KIFCO, a BCCI affiliate in Kuwait, and then loaned by KIFCO to General Securities Corporation, and paid to Libra Bank PLC. This "loan" to General Securities Corporation was never repaid.

3. Capcom US

130. In 1985, Khalil, Akbar and others agreed to create a U.S. corporation to act as the U.S. brokerage arm of Capcom UK.

131. On or about June 3, 1985, Capcom UK advanced a cash subordinated loan as capital for Capcom Futures, Inc. ("Capcom US"), an Illinois corporation formed as a subsidiary of Capcom UK to trade on the Chicago markets. On or about June 11, 1985, Capcom US applied for membership in the National Futures Association in Chicago and for Futures Comission Merchant registration. These applications were signed by Mohammed Saghir as President of Capcom US, although Saghir was an assistant to Akbar employed by the BCCI Group until March 1986. On or about October 16, 1985, Capcom US was approved to become a clearing member of the Chicago Mercantile Exchange.

132. When Capcom US was established in 1985, Khalil held an ownership interest in Capcom US as a shareholder of Capcom UK, which in turn owned 82% of Capcom US's shares.

133. Khalil continued to hold an ownership interest in Capcom US after it was restructured in 1987. Beginning in or around the summer of 1987, Khalil maintained an undisclosed ownership interest in Capcom US through nominees to avoid having to provide an unlimited personal guarantee for Capcom US's non-customer trading accounts to the Chicago Board of Trade. Through the nominee mechanism, Khalil continued to participate in the conduct of the affairs of Capcom US.

134. Capcom US was also used by Akbar and Khalil to receive and route BCCI Group funds, using United States exchanges, and for other fraudulent transactions.

4. The Current Status of the Capcom Entities

135. On or about October 10, 1988, Akbar, Capcom UK and BCCI Group companies were indicted by a grand jury in the Middle District of Florida on charges of participation in a conspiracy to launder money and to violate federal narcotics laws.

136. On October 13, 1988, Akbar resigned as a director of Capcom UK and Capcom US.

137. On October 18, 1988, the Business Conduct Committee of the Chicago Board of Trade ordered Capcom US to cease clearing operations temporarily. On or about June 21, 1989, the Chicago Board of Trade informed Capcom US that its membership would be terminated as of June 30, 1989, for fraudulent manipulation of accounts and trading.

138. On or about August 23, 1991, Capcom and Akbar were again indicted in the Middle District of Florida on money laundering and racketeering charges.

139. On or about October 1, 1989, Capcom US was fined $500,000 and expelled from the Chicago Mercantile Exchange.

140. On or about October 19, 1990, Capcom US was fined $124,000 by the National Futures Association, barred from any further involvement in the futures business and ordered to dissolve itself as a corporation and cease doing business.

141. Capcom UK has continued to operate in London, principally as a dealer in foreign exchange. At least 100 boxes of the records of Capcom UK, including records relating to the fraudulent schemes described herein, were destroyed on the orders of senior Capcom officials following the closure of the BCCI Group on July 5, 1991.

142. On or about July 30, 1992, the Subcommittee on Terrorism, Narcotics, and International Operations of the

Committee On Foreign Relations, United States Senate, held a public hearing to "break new ground on several key areas pertaining to the BCCI affair." The hearing focused "largely on the role played by Capcom, a commodities brokerage firm based in London, Cairo and Chicago . . . and Capcom's relationship to BCCI . . . ."

143. On or about September 30, 1992, the Subcommittee published a report summarizing its findings. Although the Subcommittee was unable, at that time, "to determine satisfactorily the reason Capcom was created and the purposes it served for the various parties connected to the BCCI Scandal," it hypothesized. from the "available evidence" that defendants schemes were used to: "misappropriat[e] BCCI assets for personal enrichment"; "launder[ ] billions of dollars from the Middle East to the US and other parts of the world"; and "siphon[ ] off assets from BCCI to create a safe haven for them outside the official BCCI empire."

G. Extortion of Plaintiffs by Khalil and Akbar

144. In or around March 1986, Akbar resigned from the BCCI Group and left London for Jeddah, Saudi Arabia, where he remained for some weeks. While in Jeddah, Akbar met with Khalil on a number of occasions and discussed with Khalil the full extent of BCCI Treasury losses affecting the continued viability of the BCCI Group and advised him not to continue to permit his name to be used by Abedi and Naqvi in connection with BCCI Group transactions. Akbar, just prior to his resignation, had prepared a report estimating $849 million in undisclosed losses as a result of Treasury activities. In or around March 1986, after receiving this information from Akbar, Khalil met with Naqvi in London and told him that he wished to withdraw the deposits in his name. Following this meeting, Akbar and Khalil engaged in several acts of extortion.

145. In a letter dated May 5, 1987, to Intermarket Magazine in Chicago, Akbar's attorneys threatened legal proceedings against the magazine because of alleged factual inaccuracies in an article about the BCCI Group's trading losses. Akbar directed that a copy of the letter be sent to Abedi and Abedi was invited to consider "cooperating" with Akbar.

146. In a letter dated June 3, 1987, the same lawyers wrote to Abedi at Akbar's direction suggesting that, unless the BCCI Group "cooperated" with Akbar, Akbar would disclose to Intermarket Magazine the details of the extensive treasury losses of the BCCI Group.

147. In or around the end of June 1987, Khalil and Akbar each met separately with Naqvi and combined to extort a $17 million payment, which was disguised as a placement through BCCI Overseas with General Securities Corporation, a Panamanian company controlled by Akbar. On or about June 25, 1987, funds totalling $17 million were paid from BCCI Overseas via Brenchase Limited and paid to Capcom UK for the credit of the account of General Securities Corporation. On June 30, 1987, Akbar wrote to Naqvi on General Securities Corporation letterhead confirming the receipt of $17 million in accordance with Naqvi's discussions with Khalil on June 25 and with Naqvi's discussions with Akbar on June 27. As described above in ¶ 127, although efforts were made to disguise the payment, the $17 million was ultimately retained by General Securities Corporation for the benefit of Akbar and Khalil.

148. In or around June or July 1987, Khalil met with Naqvi to determine the terms on which he would disengage from his relationship with the BCCI Group. At this meeting, Khalil demanded a $25 million payment for his having acted as a nominee in various fraudulent schemes with Akbar, Abedi and Naqvi, including the nominee ownership scheme

in CCAH. Naqvi agreed to pay $15 million of BCCI Group funds as an extortion payment to Khalil, despite the BCCI Group having no legal obligations to Khalil.

149. Having extorted this payment, on or about July 2, 1987, Khalil wrote to BCCI Overseas instructing them to dispose of the CCAH and BCCI Holdings shares in his name for a payment of $15 million in consideration of all investment transactions carried out in his name up to December 31, 1986. Khalil authorized the BCCI Group nonetheless to continue to hold the BCCI Holdings and CCAH shares in his name until December 31, 1988. Khalil also agreed to sign audit letters confirming the loan balances for a period of two years.

150. On or about July 2, 1987, Naqvi wrote to Khalil accepting the above terms.

151. On or about the same day, July 2, 1987, Khalil also signed an audit confirmation letter, which was fraudulently backdated to October 29, 1986, confirming loan balances totalling $78 million as of September 30, 1986. Khalil also signed an undated blank letter of waiver relating to the CCAH shares, as well as other documents, to enable Naqvi to continue to control the shares. By agreeing falsely to represent that he was a shareholder of BCCI Holdings and CCAH and by confirming that the purported loans from the BCCI Group advanced to pay for the CCAH shares in his name were valid assets of the BCCI Group, as evidenced by his signing of audit confirmation letters, Khalil continued to act in fraud of regulators and plaintiffs, their creditors and depositors.

152. On or about July 2, 1987, BCCI Overseas instructed Security Pacific Bank, New York to pay $15 million by wire to Chase Manhattan Bank, New York for the account of Tahia Trust SA, a company controlled by Khalil, at Libra Bank PLC.

153. Also on July 2, 1987, Cecile Ringgenberg, the registered agent for Paten, sent a telex to Capcom UK confirming Khalil's ownership of Paten and indicating that a share certificate for all of its shares had been issued in Khalil's favor. This transfer of the ownership of Paten, which had been financed entirely by BCCI Group funds, as described in ¶¶ 107 to 109, to Khalil, was part of Khalil and Akbar's extortionate scheme.

154. On or about November 11, 1987, funds totalling $9.05 million were advanced by KIFCO to three corporate entities controlled by Akbar. These funds were then paid to the account of General Securities Corporation, at Manufacturers Hanover Bank, Guernsey. The KIFCO loans were funded by an equal "back-to-back" placement of $9 million by BCCI Overseas with KIFCO. Although characterized as loans, these payments were made at the direction of Naqvi as a further extortion payment to purchase Akbar's silence about the financial condition of the BCCI Group.

155. On or about February 3, 1988, Khalil signed an agreement to sell 8,250,000 shares of Capcom UK to Akbar. Of these shares, 5 million were registered in his name and the remainder were registered in the names of other existing shareholders. The agreement states that the sale consideration was £4 million, although other liabilities were set aside and a Khalil-owned property in Vail, Colorado was transferred to Ixora Limited, a Bahamian company controlled by Akbar. The £4 million was debited from General Securities Corporation's account at Capcom UK and paid to Khalil through Allied Arab Bank, London.

156. On or about February 23, 1988, funds totalling $22 million, in four transfers of $5.5 million each, were advanced by CFC and BCCI Overseas to four companies controlled by G. R. Khan, one of Akbar's associates, for investment in

Capcom UK. $11 million was repaid from Capcom UK's account at Manufacturer's Hanover Bank to BCCI Overseas in March and April 1988.The remainder was never repaid.

157. In a letter dated December 16, 1987, Akbar acknowledged borrowings of $24.5 million. On or about March 18, 1988, Akbar and G.R. Khan signed a repayment schedule acknowledging advances made to them of $24.5 million and $22 million respectively. Of these debts, only $11 million of the $22 million advanced to Khan's companies was ever repaid. The remaining $35.5 million was never repaid.

158. These funds were advanced by the BCCI Group because Akbar and G.R. Khan threatened to reveal what they knew about irregularities at the BCCI Group if financial assistance to them through Capcom UK was not provided.

159. In or around July 1988, Akbar informed Naqvi that he had received a letter sent from Washington, D.C. by an investigator employed by the United States Senate Committee On Foreign Relations, reqesting that Akbar meet with the investigator to discuss matters relating to BCCI Group activities.

160. Akbar, Naqvi and others met at the Hilton Hotel in London to discuss the appropriate response. Naqvi instructed Akbar to travel to Washington, D.C. to meet with the investigator and learn what information he was seeking.

161. Thereafter, Akbar travelled to Washington, D.C. and met with the Senate investigator. The Senate investigator questioned Akbar about sensitive areas within the BCCI Group, including the secret ownership of First American, nominee ownership of BCCI shares, and the operations of Capcom in the United States and the United Kingdom. Akbar disclosed certain information to the Senate investigator concerning the nominee scheme to acquire First American, but lied to the Senate investigator about the true role of Khalil.

162. After meeting with the Senate investigator, on or about August 10, 1988, Akbar called Naqvi from Washington, D.C. and told him that the Senate investigator had questioned him about sensitive areas within the BCCI Group. Akbar did not disclose that he had already told the Senate investigator about certain nominee arrangements concerning BCCI Holdings and CCAH shares.

163. On August 10, 1988, Akbar also transmitted a facsimile from Washington, D.C. to Naqvi in London detailing the areas of inquiry, including inquiry regarding the use of Khalil's accounts. The facsimile stated that if Akbar refused to cooperate with Senate investigators, this would jeopardize his plans for expansion of Capcom US. Accordingly, Akbar required payment for his silence.

164. After receiving this facsimile, Naqvi directed a BCCI Group employee, Dildar Rizvi, to travel to the District of Columbia to meet with Akbar. During a meeting between Rizvi and Akbar in the District of Columbia, Akbar told Rizvi that the Senate investigator had asked him for all Capcom records and that, if he handed them over, the U.S. authorities would give him a license to operate a commodities trading business in New York. Akbar told Rizvi that he would tell the investigators the nature of the arrangements at BCCI Treasury, including the use of the Khalil accounts as well as the nominee arrangements, unless the BCCI Group provided $15 million. After Rizvi returned to London, Akbar continued to telephone Naqvi over an approximately seven-day period from Washington, D.C. and New York, New York threatening disclosure unless Naqvi caused the BCCI Group to pay him $15 million.

165. During this period, Akbar travelled to New York from Washington to meet further with the Senate investigator. At a luncheon meeting in New York, Akbar told the Senate investigator that he could "lay out in detail the criminality of BCCI."

166. On or about August 12, 1988, in response to this extortion demand, funds totalling $15 million were paid by CFC to Capcom A/c TWOY 2.

167. The funds were accounted for as a numbered loan account at CFC. The TWOY 2 account at Capcom UK was nominally owned by Akbar's brother, but was in reality owned and controlled by Akbar. On March 5, 1990, at the request of Capcom UK, this payment was recharacterized on the books of CFC as a loan to Akbar's brother, R. Akbar. This "loan" has never been repaid.

COUNT I

(Violation of RICO, 18 U.S.C. § 1962(b) & (d) and § 1964(c) with respect to Khalil's acquisition of an interest in or control over the First American enterprise)

168. Paragraphs 1 to 167 of this Complaint are realleged and incorporated herein by reference.

169. At all relevant times, Khalil and Akbar were "persons" within the meaning of 18 U.S.C. § 1961(3).

170. At all relevant times, CCAH and its wholly owned subsidiaries CCAI, FAC and FAB constituted an "enterprise" (the "First American enterprise") within the meaning of 18 U.S.C. § 1961(4).

171. At all relevant times, the First American enterprise was engaged in, and its activities affected, interstate and foreign commerce.

172. Beginning in 1981 and continuing until December 1994, Khalil, acting singly and in concert with Akbar, Abedi, Naqvi and others as co-conspirators, acquired and maintained, directly or indirectly, a nominee shareholder interest in and control of the First American enterprise through a pattern of racketeering activity in violation of RICO, 18 U.S.C. § 1962(b).

173. Beginning in 1981 and continuing until December 1994, Khalil, Akbar, Abedi, Naqvi and others also conspired to acquire and maintain, directly or indirectly, a beneficial shareholder interest in or control of the First American enterprise on behalf of plaintiffs through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(d).

174. In acquiring or conspiring to acquire these interests, Khalil and Akbar engaged in a pattern of racketeering activity, including repeated acts of (a) wire and/or mail fraud in violation of 18 U.S.C. §§ 1341 and 1343; (b) financial institution fraud in violation of 18 U.S.C. § 1344; (c) travel or transportation in aid of racketeering in violation of 18 U.S.C. § 1952; and (d) money laundering in violation of 18 U.S.C. § 1956. These acts all occurred after the effective date of RICO and more than two such acts occurred within ten years of each other. The predicate acts constituting the pattern of racketeering are detailed in ¶¶ 175 to 180 of the Complaint and include the following:

a. Wire and Mail Fraud

175. Khalil and Akbar, acting singly and in concert with Abedi, Naqvi and others as co-conspirators, participated in a scheme to defraud by means of false or fraudulent misrepresentations, statements and pretenses to U.S. bank regulatory officials and in fraud of plaintiffs and their innocent creditors and depositors. The purpose of the scheme was to acquire and maintain illegal ownership of and control over the First American enterprise. As a consequence of the scheme, U.S. bank regulators, plaintiffs and their innocent creditors and depositors were deprived of complete, accurate and material information; they relied on the incomplete and inaccurate information; and plaintiffs and their innocent creditors and depositors were damaged thereby. Khalil and Akbar, acting singly and in concert with others as co-conspirators, used the wires and/or mail or caused the use of

the wires and/or mail in furtherance of their scheme, and with the specific intent to defraud.

176. Specific acts constituting such use of interstate and international wires and mail, including wire transfers of U.S. dollars cleared through accounts in financial institutions in the United States, are detailed in §§ 65 to 79 of the Complaint and include, but are not limited, to the following:

i) The transfer by wire of $14,832,000 on or about March 2, 1982, from BCCI Overseas via BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York to United Overseas Bank, Geneva, pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and Switzerland, the United Kingdom and/or the Cayman Islands in international commerce. These funds were returned from United Overseas Bank, Geneva to BCCI Overseas via BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York on the same day pursuant to instructions, confirmations and advices sent and received by U.S. wire and/or mail between the U.S. and Switzerland, the United Kingdom and/or the Cayman Islands in international commerce, and used to acquire CCAH shares in the name of Khalil in the 1982 Initial Subscription.

ii) The transfer by wire of $137,238,503 on or about March 2, 1982, from ICIC Overseas via BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York to BCCI Overseas' A/c 92-9298 at Bank of New York, New York, pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom and/or the Cayman Islands in international commerce.

iii) The transfer by wire, on or about March 24, 1982, of $137,238,503 from BCCI Overseas A/c 92-9298 at Bank of New York, New York to CCAH's account at to Chase Manhattan Bank, New York pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom and/or the Cayman Islands in international commerce.

iv) The transfer by wire of $12,060,000 on or about August 27, 1982, from BCCI Overseas via BCCI SA London's A/c 4-85-86050 at BankAmerica International New York to CCAH's A/c CA 17355 at Chase Manhattan Bank, New York, as part of the proceeds of the 1982 CCAH Rights Issue, pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the Cayman Islands and/or the United Kingdom in international commerce.

v) The transfer by wire of $36,492,180 on or about November 1, 1983, from ICIC Overseas via BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York to State Bank of Albany for A/c 01020071 of First American Bank, New York as part of the proceeds of the 1983 CCAH Rights Issue, pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the Cayman Islands and/or the United Kingdom in international commerce.

b. Financial Institution Fraud

177. Khalil and Akbar, acting singly and in concert with Abedi, Naqvi and others as co-conspirators, executed a continuing scheme to defraud financial institutions within the meaning of 18 U.S.C. § 1344 by secretly and fraudulently

acquiring a shareholder interest for Khalil in the First American enterprise without disclosing to the Federal Reserve System, including the Federal Reserve Bank of Richmond, a financial institution within the meaning of 18 U.S.C. § 20, the material fact that Khalil only had a nominee interest and that the beneficial stock ownership was in plaintiffs.

178. This scheme was undertaken to serve illicit and harmful purposes and with the specific intent to defraud. Instances of the fraudulent acts constituting the scheme include, but are not limited to, those set forth in ¶¶ 60 to 83 of the Complaint.

c. Travel Act

179. Khalil and Akbar violated 18 U.S.C. § 1952(a) by traveling in interstate and foreign commerce with the intent of furthering unlawful activity and thereafter engaging in such unlawful activity. Instances of said travel are detailed in ¶¶ 62-64 and 159-65 of the Complaint and include, but are not limited to, the following:

a. In 1982, Khalil, Akbar and others made a trip from abroad to the District of Columbia for purposes of meeting with other nominee shareholders of the First American enterprise, consulting with attorneys, and testifying in fraud of the Federal Reserve with regard to the true ownership of the First American enterprise.

b. In 1988, Akbar made a trip from abroad to the District of Columbia and New York to meet with Senate investigators concerning, *inter alia*, the First American enterprise, with the intent to extort money from the BCCI Group in exchange for his agreement not to cooperate with a United States Senate Committee investigation.

d. Money Laundering

180. Khalil and Akbar, acting singly and in concert with Abedi, Naqvi and others as co-conspirators, transported, transmitted or transferred funds from accounts abroad to the United States and from the United States to accounts abroad with the intent to promote the carrying on of unlawful activity and/or to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of such unlawful activity, in violation of 18 U.S.C. § 1956(a)(2). These unlawful acts include, but are not limited to, the movement of funds by wire as set forth in ¶ 176 (i) to (v).

181. These acts of racketeering had the same or similar unlawful purposes, results, participants and victims and were not isolated events. The common theme of these multiple racketeering acts was illegally to acquire and maintain an interest in and control of the First American enterprise, nominally for Khalil and other nominee shareholders but beneficially for plaintiffs, to conceal the existence of that control, and to use such control for the benefit of the co-conspirators. These acts were essential elements, or incident to essential elements, of that unlawful scheme.

182. As a direct and proximate result and by reason of the acquisition and maintenance of such interests in and control over the First American enterprise, in violation of 18 U.S.C. §§ 1962(b) & (d), plaintiffs and their innocent creditors and depositors have been injured in their business and property, as contemplated by 18 U.S.C. § 1964(c) . As a result of these violations, plaintiffs sustained a loss of their assets that were fraudulently disbursed as purported loans to Khalil and other nominees secured by their CCAH shares. As a further result of these violations, BCCI Holdings, BCCI SA, BCCI Overseas and ICIC Overseas were caused to violate 18 U.S.C. § 1962(d) and were required therefore to plead guilty to a RICO conspiracy information on January 9, 1992, in the U.S.

District Court for the District of Columbia and to forfeit the entirety of their assets in the United States to the United States government. The loss of these assets is a direct and proximate result of the aforesaid conduct by Khalil and Akbar.

REQUEST FOR RELIEF

WHEREFORE plaintiffs respectfully request entry of judgment against defendants Khalil and Akbar, jointly and severally, for damages in an amount to be determined at trial, but which is estimated in to be in excess of $500 million, trebled pursuant to RICO, 18 U.S.C. § 1962(b), (c) & (d); for fees and the cost of this suit, including reasonable attorneys' fees; and for such other and further relief as this Court deems just and proper.

COUNT II

(Violation of RICO, 18 U.S.C. § 1962(c) & (d) and § 1964(c) with respect to defendants' conduct of the BCCI Enterprise)

183. Paragraphs 1 to 182 of this Complaint are realleged and incorporated herein by reference.

184. At relevant times, Akbar, Khalil, Capcom UK, and Capcom US were "persons" within the meaning of 18 U.S.C. § 1961(3).

185. At relevant times, the BCCI Group constituted an "enterprise" (the "BCCI enterprise") within the meaning of 18 U.S.C. § 1961(4).

186. At relevant times, the BCCI enterprise was engaged in, and its activities affected, interstate and foreign commerce.

187. Beginning in 1977 and continuing until 1991, Khalil and Akbar, acting singly and in concert with Abedi, Naqvi and others as co-conspirators, conducted or conspired to

conduct, directly or indirectly, the affairs of the BCCI enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962 (c) & (d). The racketeering activity included repeated acts of (a) wire and/or mail fraud in violation of 18 U.S.C. §§ 1341 and 1343, and (b) money laundering in violation of 18 U.S.C. § 1956. These acts all occurred after the effective date of RICO and more than two such acts occurred within ten years of each other.

188. The predicate acts constituting the pattern of racketeering are detailed in ¶¶ 42-59, 84-98 and 99-129 of the Complaint and include the following:

a. Wire and Mail Fraud

189. Khalil, Akbar, Capcom UK, and Capcom, acting singly and in concert with Abedi, Naqvi and others as co-conspirators, participated in a scheme to defraud by means of false or fraudulent misrepresentations, statements and pretenses in fraud of plaintiffs and their innocent creditors and depositors. The purpose of the scheme was to manipulate the assets, liabilities and capital, as well as the profits and losses, of plaintiffs to give the false appearance of solvency and profitability, while concealing that plaintiffs were in fact insolvent and unprofitable, thereby allowing the co-conspirators to plunder the assets of plaintiffs for their own benefit.

190. As detailed throughout the Complaint, the aforesaid scheme had several main elements, including (a) falsely inflating the BCCI Group's apparent capitalization, in order to support a larger book of delinquent loans and other bad investments, through the use of Khalil as a nominee shareholder to acquire shares in BCCI Holdings, while actually funding the "purchase" of such shares from plaintiffs' own assets, but disguising such funding as the proceeds of "loans" to Khalil or Khalil-affiliated companies; (b) using

Khalil and Khalil-affiliated accounts to adjust and thereby conceal non-performing loans on the books of the BCCI Group; (c) using Khalil and Khalil-affiliated accounts to create the false appearance that the BCCI Group was earning profits on loans to purchase real property; and (d) using Khalil and Khalil-affiliated accounts to conceal the use of BCCI Group Treasury funds in high-risk commodities, options and futures trading and to create the false appearance of profits to the BCCI Group in connection with sham commodities, options and futures trading.

191. Khalil, Akbar, Capcom UK, and Capcom, acting singly and in concert with Abedi, Naqvi and others as co-conspirators, used or caused the use of interstate and international wires and/or mail, including wire transfers of U.S. dollars cleared through accounts in financial institutions in the United States, in furtherance of their scheme and with specific intent to defraud. Specific acts constituting such wire and/or mail fraud include, but are not limited to, the following:

i) The transfer by wire, on or about June 27, 1980, of $5 million from BCCI Overseas via BCCI SA's London's A/c 4-85-86050 at BankAmerica International, New York to BCCI SA Luxembourg's A/c 4-85-86051 at BankAmerica International, New York, pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom and/or Luxembourg in international commerce. These funds were credited to ICIC Overseas A/c 6-8451-7/12 at BCCI SA Luxembourg, and represented the fraudulent funding at the direction of Akbar and/or Naqvi of the nominee purchase of 40,000 BCCI Holdings shares (at $125 per share) in the name of Khalil.

ii) The transfer by wire, on or about December 15, 1980, of $1,289,475 from BCCI SA's London's A/c 4-85-86050 at BankAmerica International, New York to BCCI SA Luxembourg's A/c 4-85-86051 at BankAmerica International, New York, pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom and/or Luxembourg in international commerce. These funds represented the fraudulent funding at the direction of Akbar and/or Naqvi of the purchase of 10,315.8 BCCI Holdings shares (at $125 per share) in the name of Khalil.

iii) The transfer by wire, on or about December 14, 1981, of $1,333,320 from BCCI SA's London's A/c 4-85-86050 at BankAmerica International, New York to BCCI SA Luxembourg's A/c 4-85-86051 at BankAmerica International, New York, pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom and/or Luxembourg in international commerce. These funds represented the fraudulent funding at the direction of Akbar and/or Naqvi of the purchase of 6,666.6 BCCI Holdings shares (at $200 per share) in the name of Khalil. These shares were treated by Abedi and Naqvi as beneficially owned by Khalil even though he did not finance their purchase from his own funds.

iv) The transfer by wire, on or about December 28, 1981, of $2,105,280 from BCCI SA's London's A/c 4-85-86050 at BankAmerica International, New York to BCCI SA Luxembourg's A/c 4-85-86051 at BankAmerica International, New York, pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom and/or Luxembourg in international

commerce. These funds represented the fraudulent funding at the direction of Akbar and/or Naqvi of the nominee purchase of 10,526.4 BCCI Holdings shares (at $200 per share) in the name of Khalil.

v) The transfer by wire, on or about December 15, 1982, of $842,200 from BCCI SA's London's A/c 4-85-86050 at BankAmerica International, New York to BCCI SA Luxembourg's A/c 4-85-86051 at BankAmerica International, New York, pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom and/or Luxembourg in international commerce. These funds were credited to BCCI Holdings' A/c 01008722 at BCCI SA Luxembourg and represented the fraudulent funding at the direction of Akbar and/or Naqvi of the nominee purchase of 21,055 BCCI Holdings shares (at $40 per share) in the name of Khalil.

vi) The transfer by wire, on or about December 20, 1982, of $533,320 from BCCI SA's London's A/c 4-85-86050 at BankAmerica International, New York to BCCI SA Luxembourg's A/c 4-85-86051 at BankAmerica International, New York, pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom and/or Luxembourg in international commerce. These funds were credited to BCCI Holdings' A/c 01008722 at BCCI SA Luxembourg and represented the fraudulent funding at the direction of Akbar and/or Naqvi of the purchase of 13,333 BCCI Holdings shares (at $40 per share) in the name of Khalil. These shares were treated by Abedi and Naqvi as beneficially owned by Khalil even though he did not finance their purchase from his own funds.

vii) The transfer by wire, on or about September 18, 1984, of $75 million from BCCI Overseas via BCCI SA's London's A/c 4-85-86050 at BankAmerica International, New York to Bank of India, London's A/c 400-016-230 at Chemical Bank, New York, pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom and/or the Cayman Islands in international commerce. Akbar falsely represented these funds as a free deposit.

viii) The transfer by wire, on or about September 18, 1984 of $75 million from Bank of India, London's A/c 400-016-230 at Chemical Bank, New York to BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York for the account of BCCI Overseas, pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom and/or India in international commerce. Akbar falsely represented these funds as receipts from Khalil and his company, Maram.

ix) The transfer by wire, on or about December 18, 1984 of $50 million from BCCI Overseas' via BCCI SA's London's A/c 4-85-86050 at BankAmerica International, New York to Bank of India, London's A/c 400-016-230 at Chemical Bank, New York, pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U. S. and the United Kingdom and/or the Cayman Islands in international commerce. Akbar falsely represented these funds as a free deposit.

x) The transfer by wire, on or about December 18, 1984, of $50 million from Bank of India, London's A/c 400-016-230 at Chemical Bank, New York to BCCI SA

London's A/c 4-85-86050 at BankAmerica International, New York for the account of BCCI Overseas, pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom and/or India in international commerce. Akbar falsely represented these funds as receipts from Khalil and his company, Maram.

xi) The transfer by wire of $1,375,440 on or about December 17, 1984, from BCCI Overseas via BCCI SA London's A/c 4-85-86050 at Bank America International New York to BCCI SA Luxembourg's A/c 101 2644 at First Chicago International, New York. These funds were credited to the BCCI Holdings Share Subscription account at BCCI SA Luxembourg pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom, the Cayman Islands and/or Luxembourg in international commerce. These funds represented the fraudulent funding at the direction of Akbar and/or Naqvi of 34,386 ECCI Holdings Shares in the name of Khalil in the 1984 rights offering.

xii) The issuance of a check to Khalil for $12.5 million on or about August 20, 1985, from BCCI Overseas via BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York.

xiii) The transfer by wire of $2,063,160, on or about December 23, 1985, from BCCI Overseas via BCCI SA London's A/c 4-85-86050 at Bank America International , New York to BCCI SA Luxembourg's A/c 1012644 at First Chicago International, New York. These funds were credited to the BCCI Holdings share subscription account at BCCI SA

Luxembourg pursuant to instructions, confirmations and advices received by U.S. wires and/or mail between the U.S. and the United Kingdom, Luxembourg and/or the Cayman Islands. These funds represented the fraudulent funding at the direction of Akbar and/or Naqvi of 51,579 BCCI Holdings shares in the name of Khalil in the 1985 rights issue.

xiv) The transfer by wire of $20 million on or about October 31, 1983, from BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York to State Bank of India, London's A/c 36002753 at Citibank, New York pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom in international commerce. These funds, placed under the terms of a guarantee secretly and fraudulently signed by Akbar on behalf of the BCCI Group, were falsely represented to be a free deposit. In fact, these funds were returned to the BCCI Group on or about November 1, 1983, where they were recharacterized as a cash receipt.

xv) The transfer by wire of $20 million on or about November 1, 1983, from the account of Notan Trading & Investments Limited, an Akbar-controlled company, at State Bank of India, London via State Bank of India London's A/c 36002753 at Citibank, New York to BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom in international commerce. These funds were falsely represented by Akbar as received from Notan for silver sold on November 7, 1983.

xvi) The transfer by wire of $20 million on or about December 14, 1983, from BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York to State Bank of India, London's A/c 36002753 at Citibank, New York pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom in international commerce. These funds, placed under the terms of a guarantee secretly and fraudulently signed by Akbar on behalf of the BCCI Group, were falsely represented to be a free deposit. In fact, these funds were returned to the BCCI Group on or about November 1, 1983 where they were recharacterized as a cash receipt.

xvii) The transfer by wire of $20 million on or about December 15, 1983, from the account of Notan Trading & Investments Limited, an Akbar-controlled company, at State Bank of India, London via State Bank of India, London's A/c 36002753 at Citibank, New York to BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom and/or India in international commerce. These funds were credited to Khalil's account 01001279 at BCCI Overseas.

xviii) The transfer by wire on or about May 9, 1986, of $87,22,583.34, pursuant to Khalil's instructions, from BCCI Overseas via BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York to Allied Arab Bank, London's A/c 36010841 at Citibank N.A., New York for the credit of A/c 802555 in favor of Museum Trust SA (a Khalil-owned company) pursuant to instructions, confirmations and advices sent and received by U.S. wires

and/or mail between the U.S. and the United Kingdom and/or the Cayman Islands in international commerce.

xix) The transfer by wire on or about July 3, 1987, from BCCI Overseas A/c 07012001 at Security Pacific Bank, New York to Libra Bank PLC's A/c 00217540 at Chase Manhattan Bank, New York in favor of Tahia Trust, SA, a company owned by Khalil, pursuant to instructions, confirmations and advices received by U.S. wires and/or mail between the US and the United Kingdom and/or the Cayman Islands in international commerce.

b. Money Laundering

192. Khalil and Akbar, acting singly and in concert with Abedi, Naqvi and others as co-conspirators, transported, transmitted or transferred funds from accounts abroad to the United States and from the United States to accounts abroad with the intent to promote the carrying on of specified unlawful activity and/or to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of such unlawful activity, and all in violation of 18 U.S.C. § 1956(a)(2). These unlawful acts include, but are not limited to, the movement of funds by wire as set forth in ¶ 191 (i) to (xix), above.

193. These acts of racketeering had the same or similar unlawful purposes, results, participants and victims and were not isolated events. The common theme of these multiple racketeering acts was for the purposes set forth in ¶ 190 above. These acts were essential elements, or incident to essential elements, of that unlawful scheme.

194. As a direct and proximate result and by reason of said scheme to conduct or participate, directly or indirectly, in the conduct of the affairs of the BCCI enterprise through a

pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c) & (d), plaintiffs and their innocent creditors and depositors have been injured in their business and property, as contemplated by 18 U.S.C. § 1964(c). As a result of these violations, plaintiffs sustained a loss of assets that were squandered in these fraudulent transactions and were made to appear solvent and profitable, when in fact they were insolvent and unprofitable, thereby allowing further dissipation of their assets to the damage of plaintiffs and their innocent creditors and depositors who relied upon the false appearance of solvency and profitability.

REQUEST FOR RELIEF

WHEREFORE plaintiffs respectfully request entry of judgment against defendants, jointly and severally, for damages in an amount to be determined at trial, but which is estimated in to be in excess of $500 million, trebled pursuant to RICO, 18 U.S.C. § 1962 (c) & (d); for fees and the cost of this suit, including reasonable attorneys' fees; and for such other and further relief as this Court deems just and proper.

COUNT III

(Violation of RICO, 18 U.S.C. § 1962(c) & (d) and § 1964(c) with respect to Khalil and Akbar's operation and participation in the conduct of the Capcom Enterprise)

195. Paragraphs 1 to 194 of this Complaint are realleged and incorporated herein by reference.

196. At all relevant times, Khalil and Akbar were "persons" within the meaning of 18 U.S.C. § 1961(3).

197. At all relevant times Capcom UK and its subsidiaries, Capcom US and Brenchase Limited, constituted an "enterprise" (the "Capcom enterprise") within the meaning of 18 U.S.C. § 1961(4).

198. At all relevant times, Khalil and Akbar were "person[s] associated with" an enterprise within the meaning of 18 U.S.C. § 1962(c).

199. At all relevant times, the Capcom enterprise was engaged in, and its activities affected, interstate and foreign commerce.

200. Beginning in 1984 and continuing until the present, Khalil and Akbar, acting singly and in concert with others as co-conspirators, conducted or conspired to conduct, directly or indirectly, the affairs of the Capcom enterprise through a pattern of racketeering activity, in violation of RICO, 18 U.S.C. § 1962(c) & (d). The racketeering activity included repeated acts of (a) wire and/or fraud in violation of 18 U.S.C. §§ 1341 and 1343; (b) travel or transportation in aid of racketeering in violation of 18 U.S.C. § 1952; (c) money laundering in violation of 18 U.S.C. § 1956; and (d) extortion in violation of D.C. Code § 22-3851 and 18 U.S.C. § 1951. These acts all occurred after the effective date of RICO and more than two such acts occurred within ten years of each other.

201. The predicate acts constituting the pattern of racketeering are detailed in ¶¶ 101-29 and 147-67 of the Comp1aint and include the following:

a. Wire and Mail Fraud

202. Khalil, Akbar, and others participated in a scheme to defraud by means of false or fraudulent misrepresentations, statements and pretenses to and in fraud of plaintiffs and their innocent creditors and depositors. The purpose of the scheme was surreptitiously to loot the assets of plaintiffs in order to participate in the conduct of and operate the affairs of Capcom enterprise for their own benefit. Khalil and Akbar operated the affairs of the Capcom enterprise using funds obtained from plaintiffs based on repeated false or fraudulent

statements, representations and pretenses to plaintiffs which relied on such false information and were damaged thereby. Defendants, acting singly and in concert as co-conspirators, used the wires or caused the use of the wires in furtherance of their scheme to defraud, and with the specific intent to defraud.

203. Specific acts constituting such use of interstate and international wires, including wire transfers of U.S. dollars cleared through accounts in financial institutions in the United States, include, but are not limited to, the following:

i) The transfer by wire, on or about October 18, 1984, of $10 million from BCCI Overseas via BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York to Manufacturers Hanover Trust Company, London's A/c 544713615 at Manufacturers Hanover Trust Company, New York for the credit of Capcom UK pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom in international commerce.

ii) The transfer by wire, on or about October 26, 1984, of $10 million from BCCI Overseas via BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York to Manufacturers Hanover Trust Company, London's A/c 544713615 at Manufacturers Hanover Trust Company, New York for the credit of Capcom UK pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom in international commerce.

iii) The transfer by wire, on or about October 29, 1984, of $10.5 million from BCCI Overseas via BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York to Manufacturers Hanover Trust

Company, London's A/c 544713615 at Manufacturers Hanover Trust Company, New York for the credit of Capcom UK pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom in international commerce.

iv) The transfer by wire , on or about November 2, 1984, of $4.5 million from BCCI Overseas via BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York to Manufacturers Hanover Trust Company, London's A/c 544713615 at Manufacturers Hanover Trust Company, New York for the credit of Capcom UK pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom in international commerce.

v) The transfer by wire, on or about November 9, 1984, of $13 million from BCCI Overseas via BCCI SA London' s A/c 4-85-86050 at BankAmerica International, New York to Manufacturers Hanover Trust Company, London's A/c 544713615 at Manufacturers Hanover Trust Company, New York for the credit of Capcom UK pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom in international commerce.

vi) The transfer by wire, on or about November 15, 1984, of $30 million from BCCI Overseas via BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York to Manufacturers Hanover Trust Company, London's A/c 544713615 at Manufacturers Hanover Trust Company, New York for the credit of Capcom UK pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or

mail between the U.S. and the United Kingdom in international commerce.

vii) The transfer by wire, on or about November 20, 1984, of $12 million from BCCI Overseas via BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York to Manufacturers Hanover Trust Company, London's A/c 544713615 at Manufacturers Hanover Trust Company, New York for the credit of Capcom UK pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom in international commerce.

viii) The transfer by wire, on or about December 4, 1984, of $10 million from BCCI Overseas via BCCI SA London's A/c 4-85-86050 at BankAmerica International, New York to Manufacturers Hanover Trust Company, London's A/c 544713615 at Manufacturers Hanover Trust Company, New York for the credit of Capcom UK pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom in international commerce.

ix) The issuance of a check to Brenchase Limited for $68 million on or about June 26, 1985, from BCCI Overseas via BCCI SA London's A/c 01338501 at National Westminster Bank, London. The issuance, negotiation and clearing of this check was effected pursuant to instructions, confirmations and advices sent or received by U.S. wire and/or mail between the U.S. and the United Kingdom in international commerce.

x) The issuance of a check to Brenchase Limited for $14 million on or about June 26, 1985, from BCCI Overseas via BCCI SA London's A/c 01338501 at

National Westminster Bank, London. The issuance, negotiation and clearing of this check was effected pursuant to instructions, confirmations and advices sent or received by U.S. wire and/or mail between the U.S. and the United Kingdom in international commerce.

xi) The issuance of a check to Brenchase Limited for $15 million on or about January 8, 1986, from BCCI Overseas via BCCI SA London's A/c 01338501 at National Westminster Bank, London. The issuance, negotiation and clearing of this check was effected pursuant to instructions, confirmations and advices sent or received by U.S. wire and/or mail between the U.S. and the United Kingdom in international commerce.

xii) The issuance of a check to Brenchase Limited for $2,569,103.94 on or about February 18, 1986, from BCCI Overseas via BCCI SA London's A/c 01338501 at National Westminster Bank, London. The issuance, negotiation and clearing of this check was affected pursuant to instructions, confirmations and advices sent or received by U.S. wire and mail between the U.S. and the United Kingdom in international commerce.

xiii) The transfer by wire, on or about March 4, 1986, of $50 million raised through a repurchase transaction involving $50 million nominal 9% U.S. Treasury Notes held in the name of ICIC Overseas with E F Hutton & Co. These funds were remitted by wire from ICI.C Overseas' A/c 180676 at Bank of New York, New York to Capcom UK's A/c 140-0-99057 at Manufacturers Hanover Trust Company, New York pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between

the U.S. and the Cayman Islands and/or the United Kingdom in international commerce.

xiv) The transfer by wire, on or about March 13, 1986, of $50 million raised through a repurchase transaction involving $50 million nominal 9% U.S. Treasury Notes held in the name of ICIC Overseas with E F Hutton & Co. These funds were remitted by wire from ICIC Overseas' A/c 180676 at Bank of New York, New York to Capcom UK's A/c 140-0-99057 at Manufacturers Hanover Trust Company, New York pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the Cayman Islands and/or the United Kingdom in international commerce.

xv) The transfer by wire, on or about March 19, 1986, of $5,118,750 from ICIC Overseas via the account of Banque de Commerces et des Placements, Luxembourg (a BCCI Group affiliate) at Bank of New York, New York to Capcom UK's A/c 140-0-99057 at Manufacturers Hanover Trust Company, New York pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the Cayman Islands and/or the United Kingdom and/or Luxembourg in international commerce.

xvi) The transfer by wire, on or about April 1, 1986, of $15,467,000 from ICIC Overseas via BCCI Overseas' account at BCCI SA New York, New York to Capcom UK's A/c 140-0-99057 at Manufacturers Hanover Trust Bank, New York pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the Cayman Islands and/or the United Kingdom in international commerce.

xvii) The transfer by wire, on or about April 3, 1986, of $50,976,473.28 from ICIC Overseas via the account of Banque de Commerce et des Placements, Geneva (a BCCI Group affiliate) at First American Bank, New York to Capcom UK's A/c 140-0-99057 at Manufacturers Hanover Trust Company, New York pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U. S. and the Cayman Islands, Switzerland and/or the United Kingdom in international commerce.

xviii) The transfer by wire, on or about June 26, 1987, of $17 million from BCCI Overseas' A/c 07012001 at Security Pacific International Bank, New York to Manufacturers Hanover Trust Company, London A/c 544713615 at Manufacturers Hanover Trust Company, New York for the credit of Brenchase Limited, pursuant to instructions, continuations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom and/or the Cayman Islands in international commerce. These funds were subsequently transferred from Brenchase Limited to Capcom UK for the credit of the account of General Securities Inc., a Panamanian registered company controlled by Akbar.

xix) The transfer by wire, on or about October 6, 1987, of $17 million from BCCI Overseas' A/c 07012001 at Security Pacific International Bank, New York to Libra Bank, London's account at Chase Manhattan Bank, New York for the credit of the account of General Securities Corporation, a Panamanian Registered company controlled by Akbar, pursuant to instructions, confirmations and advices sent and received by U.S. wires aid/or mail between the U.S. and the United Kingdom and/or the Cayman Islands in international commerce.

xx) The transfer by wire, on or about November 30, 1987, of $9 million from BCCI Overseas A/c 07012001 at Security Pacific International Bank, New York to KIFCO's A/c 4-85-86060 at BankAmerica International, New York pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the United Kingdom, the Cayman Islands, and/or Kuwait in international commerce. These funds subsequently were transferred on December 1, 1987 to Manufacturers Hanover Trust Company, New York for the account of Manufacturers Hanover Trust Company (Guernsey) Limited, Guernsey, Channel Islands for the credit of A/c 0014-048272-520 of General Securities Corporation, a Panamanian registered company controlled by Akbar.

xxi) The transfer by wire, on or about February 23, 1988, of $5.5 million from CFC Grand Cayman's A/c 03007009 at Security Pacific International Bank, New York to Capcom UK's A/c 140-0-99057 at Manufacturers Hanover Trust Company, New York by order of SES investments Limited (a company controlled by Akbar's associate, G. R. Khan) for the credit of Capcom UK's A/c TWOY 2 pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the Cayman Islands and/or the United Kingdom in international commerce.

xxii) The transfer by wire, on or about February 23, 1988, of $5.5 million from CFC Grand Cayman's A/c 03007009 at Security Pacific International Bank, New York to Capcom UK's A/c 140-0-99057 at Manufacturers Hanover Trust Company, New York by order of Mark Insurance Consultants Limited, a company controlled by Akbar's associate, G. R.

Khan, for the credit of Capcom UK's A/c TWOY 2 pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the Cayman Islands and/or the United Kingdom in international commerce.

xxiii) The transfer by wire, on or about February 23, 1988, of $5.5 million from BCCI Overseas A/c 07012001 at Security Pacific International Bank, New York to Capcom UK's A/c 140-0-99057 at Manufacturers Hanover Trust Company, New York by order of Mahawish and Mahawish, a company controlled by Akbar's associate, G. R. Khan, for the credit of Capcom UK A/c TWOY 2 pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the Cayman Islands and/or the United Kingdom in international commerce.

xxiv) The transfer by wire, on or about February 23, 1988, of $5.5 million from BCCI Overseas A/c 07012001 at Security Pacific International Bank, New York to Capcom UK's A/c 140-0-99057 at Manufacturers Hanover Trust Company, New York by order of El Rawas Real Investment Limited, a company controlled by Akbar's associate, G. R. Khan, for the credit of Capcom UK A/c TWOY 2 pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the Cayman Islands and/or the United Kingdom in international commerce.

xxv) The use of the U.S. wires by Akbar on or about August 10, 1988 to telephone Naqvi in London, England from Washington, D.C. to discuss the areas of Senate inquiry and extort payment for his silence.

xxvi) The use of the U.S. wires by Akbar on August 10, 1988 to transmit a facsimile via wire from Washington, D.C. to Naqvi in London, England, threatening Naqvi with disclosure of fraudulent activity involving plaintiffs, and demanding payment for his silence.

xxvii) Repeated uses of the U.S. wires by Akbar during the period of approximately August 10 through August 17, 1988, to telephone Naqvi in London, England from Washington, D.C., and New York, threatening to disclose the manipulation of the BCCI Group's books and records and the secret ownership of First American.

xxviii) The transfer by wire, on or about August 12, 1988, of $15 million from CFC Grand Cayman's A/c 03007009 at Security Pacific International Bank, New York to Capcom UK's A/c 140-0-99057 at Manufacturers Hanover Trust Company, New York for the credit of Capcom UK A/c TWOY 2 pursuant to instructions, confirmations and advices sent and received by U.S. wires and/or mail between the U.S. and the Cayman Islands and/or the United Kingdom in international commerce.

b. Travel Act

204. Defendants violated 18 U.S.C. § 1952(a) when Akbar, acting for himself and in conspiracy with Khalil, travelled in interstate and foreign commerce with the intent of furthering unlawful activity and thereafter engaging in such unlawful activity. In 1988, Akbar travelled from abroad to the District of Columbia and New York to undertake business transactions on behalf of the Capcom enterprise and to meet with Senate investigators with the intent to extort money from plaintiffs to further invest in and operate the Capcom enterprise, as set forth in ¶¶ 159-67 of the Complaint.

c. Money Laundering

205. Defendants, acting singly and in concert with others, transported, transmitted or transferred, funds from accounts abroad to the United States and from the United States to accounts abroad with the intent to promote the carrying on of specified unlawful activity, and/or to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of such unlawful activity, in violation of 18 U.S.C. § 1956 (a)(2). These unlawful acts include, but are not limited to, the movement of funds by wire as set forth in ¶ 2032 (i) to (xxiv) and (xxviii), above.

d. Extortion

206. Defendants violated D.C. Code § 22-3811 and/or 18 U.S.C. § 1951 by obtaining or attempting to obtain the property of plaintiffs with consent which was induced by wrongful threat of economic injury and/or by affecting commerce through extortion in furtherance of their fraudulent scheme. Instances of such conduct included the acts of extortion alleged in ¶¶ 144-67 of the Complaint.

207. Each of the racketeering activities described above was undertaken for the common purpose of furthering defendants' fraudulent scheme to loot surreptitiously substantially in excess of $100 million from plaintiffs through numerous fraudulent and extortionate transactions in conduct of their racketeering activity in the Capcom enterprise. Each such act of racketeering activity had similar purposes, involved the same or similar participants and had similar results impacting similar victims, namely plaintiffs and their innocent depositors and creditors, and was part of a recurring pattern of similar schemes. These acts were essential elements, or incident to essential elements, of that unlawful scheme.

208. As a direct and proximate result and by reason of said scheme to conduct or participate, directly or indirectly, in the conduct of the affairs of the Capcom enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c) & (d), plaintiffs and their innocent creditors and depositors have been injured in their business and property, as contemplated by 18 U.S.C. § 1964(c). As a result of these violations, the BCCI Group sustained a loss of assets that were acquired and converted by defendants in these fraudulent transactions and sustained a further loss of assets in meeting defendants' extortionate demands. As a further result of these violations, plaintiffs were made to appear solvent and profitable, when in fact they were insolvent and unprofitable, thereby allowing further dissipation of their assets to the damage of plaintiffs and their innocent creditors and depositors who relied upon the false appearance of solvency and profitability.

REQUEST FOR RELIEF

WHEREFORE plaintiffs respectfully request entry of judgment against defendants Khalil and Akbar, jointly and severally, for damages in an amount to be determined at trial, but which is estimated in to be in excess of $500 million trebled pursuant to RICO, 18 U.S.C. § 1962 (b), (c) & (d); for fees and the cost of this suit, including reasonable attorneys' fees; and for such other and further relief as this Court deems just and proper.

COUNT IV

(Violation of RICO, 18 U.S.C § 1962(a) and (d) and § 1964(c) in respect of defendants' investment in the Capcom enterprise)

209. Paragraphs 1 through 208 of this Complaint are realleged and incorporated herein by reference.

210. At all relevant times, Akbar, Khalil, Capcom UK and Capcom US were "persons" within the meaning of 18 U.S.C. § 1961(3).

211. At all relevant times, Capcom UK and its subsidiaries, Capcom US and Brenchase Limited, constituted an "enterprise" (the "Capcom enterprise") within the meaning of 18 U.S.C. § 1961(4).

212. At all relevant times, the Capcom enterprise was engaged in, and its activities affected, interstate and foreign commerce.

213. Beginning in 1984 and continuing until the present, Khalil and Akbar, acting singly and in concert, and as co-conspirators, received and conspired to receive, directly or indirectly, income derived from a pattern of racketeering activity and used or invested, or conspired to use or invest, directly or indirectly, such income, or the proceeds of such income, in the operation of the Capcom enterprise. The above-referenced income consists of approximately £20 million and in excess of $100 million that Khalil and Akbar diverted from the BCCI Group in the form of fraudulent loans, illegal payments, and funds derived from extortion, as set forth in ¶¶ 101-11, 116-19, 124-129, 131, 154, 157-67 of this Complaint.

214. Khalil and Akbar, personally or through agents, engaged in the above-referenced violations of § 1962(a) and (d) through a pattern of racketeering activity. This racketeering activity included repeated acts of (a) wire and mail fraud in violation of 18 U.S.C. §§ 1341 and 1343; (b) travel or transportation in aid of racketeering in violation of 18 U.S.C. § 1952; (c) money laundering in violation of 18 U.S.C. § 1956; and (d) extortion in violation of D.C. Code § 22-3851 and 18 U.S.C. § 1951. These acts all occurred after the effective date of RICO and more than two such acts occurred within ten years of each other.

The predicate acts constituting the pattern of racketeering are detailed in ¶¶ 101-11, 116-19, 124-129, 131, 154, 157-67 of the Complaint and include the following:

a. Wire and Mail Fraud

215. Defendants and others participated in a scheme to defraud, by means of false or fraudulent misrepresentations, statements and pretenses to and in fraud of plaintiffs and their innocent creditors and depositors, and U.S. and foreign regulatory officials. The purpose of the scheme was to loot plaintiffs' assets surreptitiously in order to invest in and operate the Capcom enterprise for the benefit of defendants. Defendants invested in the Capcom enterprise funds derived from repeated false or fraudulent statements, representations and pretenses to plaintiffs and their creditors and depositors, and to U.S. and foreign regulators, all of whom were thereby deprived of complete, accurate and material information. Plaintiffs and their creditors and depositors, relied on the incomplete and inaccurate information and were damaged by the investment of the funds derived from the pattern of racketeering in the Capcom enterprise. Defendants, acting singly and in concert, as co-conspirators, used the wires or caused the use of the interstate and international wires in furtherance of their scheme to defraud, and with the specific intent to defraud.

216. Among the acts constituting the wire and mail fraud that were part of and in furtherance of the scheme to defraud, defendants initiated wire communications in interstate and foreign commerce and, in particular, initiated wire transfers of U.S. dollars cleared through accounts in financial institutions in the United States. Specific acts constituting wire and mail fraud in furtherance of the scheme include but are not limited to those alleged in ¶ 203 (i)-(viii), (xi)-(xiii) and (xv)-(xxviii) of Count III.

b. Travel Act

217. Defendant Akbar violated 18 U.S.C. § 1952(a) by traveling in interstate and foreign commerce with the intent of furthering unlawful activity and thereafter engaging in such unlawful activity. In 1988, Akbar, acting on behalf of himself and in conspiracy with Khalil, travelled to Washington, D.C. and New York, New York to undertake business transactions on behalf of the Capcom enterprise and to meet with Senate investigators with the intent to extort money from plaintiffs to invest in and operate the Capcom enterprise.

c. Money Laundering

218. Defendants transported, transmitted or transferred, funds from accounts abroad to the United States and from the United States to accounts abroad with the intent to promote the carrying on of specified unlawful activity, and/or to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of such unlawful activity, and all in violation of 18 U.S.C. § 1956(a) (2). These unlawful acts include, but are not limited to, the movement of funds by wire as set forth in ¶ 203 (i) to (viii), (xi) to (xiii), (xv) to (xxiv) and (xxviii) above.

d. Extortion

219. Defendants violated D.C. Code § 22-3811 and/or 18 U.S.C. § 1951 by obtaining or attempting to obtain the property of plaintiffs with consent which was induced by wrongful threat of economic injury and/or by affecting commerce through extortion in furtherance of the fraudulent schemes alleged herein. Specific examples of such conduct include the acts of extortion alleged in ¶ 144-67 and include the acts of wire fraud alleged in ¶ 203 (xxv) to (xxviii).

220. Each of the racketeering activities described above was undertaken for the common purpose of furthering

defendants' fraudulent scheme to loot surreptitiously hundreds of millions of dollars from plaintiffs through numerous fraudulent and extortionate transactions, and to invest the proceeds of the racketeering activity in the Capcom enterprise. Each such act of racketeering activity had similar purposes, involved the same or similar participants and had similar results impacting similar victims, namely plaintiffs, their depositors and creditors, and was part of a recurring pattern of similar schemes. These acts were essential elements, or incident to essential elements, of that unlawful scheme.

221. As a direct and proximate result and by reason of defendants' scheme to invest directly or indirectly income derived from racketeering activity, or the proceeds of such income, in the operation of the Capcom enterprise, in violation of 18 U.S.C. § 1962(a), and of defendants' conspiracy to invest, directly or indirectly, income derived from racketeering activity, or the proceeds of such income, in the operation of the Capcom enterprise, in violation of 18 U.S.C. § 1962(d), plaintiffs and their creditors and depositors, have been injured in their business and property by defendants' investment of such funds. As a result of this fraudulent scheme, defendants caused plaintiffs' assets to be transferred to them in the form of fraudulent loans, illegal payments and funds derived from extortion. As a further result of this fraudulent scheme, defendants used the Capcom enterprise to route funds, create sham transactions and otherwise facilitate the falsification of plaintiffs' balance sheets to the detriment of plaintiffs, and their innocent creditors and depositors. The loss of these assets was a direct result of the conspiracy to defraud.

REQUEST FOR RELIEF

WHEREFORE plaintiffs respectfully request the entry of a judgment against defendants, jointly and severally, for

damages in an amount to be determined at trial, but which is estimated in to be in excess of $500 million, to be trebled pursuant to RICO, 18 U.S.C. § 1964(a) and (d); for fees and the cost of this suit, including reasonable attorneys' fees; and for such other and further relief as this Court deems just and proper.

COUNT V

(Common law fraud by defendants with respect to fraudulent loans and payments made to Capcom)

222. Paragraphs 1 through 221 of this Complaint are realleged and incorporated herein by reference.

223. Defendants Khalil, Akbar, Capcom UK and Capcom US fraudulently obtained plaintiffs' funds for their own benefit by intentionally creating and executing documents and making other representations, as alleged in paragraphs 99-168 and 203 that disguised the transfer of such funds to defendants as loans or other payments to companies owned and/or controlled by defendants Khalil and Akbar or their agents.

224. Plaintiffs relied on defendants' representations, and advanced substantial funds to defendants, which were never repaid.

225. As a direct and proximate result of defendants' fraud, plaintiffs and their depositors and creditors have been injured in their business and property.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand entry of judgment on Count V against defendants Khalil, Akbar, Capcom UK and Capcom US, jointly and severally, for compensatory damages in an amount to be determined at trial, but which are estimated in excess of $500 million, for pre-judgment interest, for punitive damages to be assessed in the amount of $500 million, for the costs of this suit, for disgorgement of all

funds fraudulently obtained from plaintiffs, and for such other and further relief as this Court deems appropriate.

COUNT VI

(Conversion by defendants with respect to Capcom)

226. Paragraphs 1 through 225 of this Complaint are realleged and incorporated herein by reference.

227. By their illegal and fraudulent acts as described herein, including but not limited to the procurement of loans and other payments by fraudulent means and the procurement of funds by extortion, Khalil, Akbar, Capcom UK, and Capcom US intentionally converted to their own use substantial funds belonging to plaintiffs.

228. As a direct and proximate result of defendants' conversion of plaintiffs' funds, plaintiffs and their depositors and creditors have been injured in their business and property.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand entry of judgment on Count VI against defendants Khalil, Akbar, Capcom UK and Capcom US, jointly and severally, for compensatory damages in an amount to be determined at trial, but which are estimated in excess of $500 million, for pre-judgment interest, for punitive damages in the amount of $500 million, for the costs of this suit, for disgorgement of all funds unlawfully converted by defendants, and for such other and further relief as this Court deems appropriate.

COUNT VII

(Unjust Enrichment Against Khalil, Akbar, Capcom UK and Capcom US with respect to payments to Capcom)

229. Paragraphs 1 through 228 of this Complaint are realleged and incorporated herein by reference.

230. By reason of the illegal and fraudulent conduct as described herein, including but not limited to the procurement of loans and other payments by fraudulent means and the procurement of funds by extortion, defendants Khalil, Akbar, Capcom UK and Capcom US were unjustly enriched at the expense of plaintiffs and their respective depositors and creditors.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand entry of judgment on Count VI against defendants Khalil, Akbar, Capcom UK and Capcom US, jointly and severally, for compensatory damages in an amount to be determined at trial, but which are estimated in excess of $500 million, for pre-judgment interest, for punitive damages in the amount of $500 million, for the costs of this suit, for disgorgement of all funds by which defendants were unjustly enriched, and for such other and further relief as this Court deems appropriate

NUSSBAUM & WALD

/s/ Michael Nussbaum
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Dated: July 3, 1995

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No.: 95-1252 (JHG/PJA)

BCCI HOLDINGS (LUXEMBOURG), S.A., *et al.*,
Plaintiffs,

vs.

ABDUL RAOUF HASAN KHALIL, *et al.*,
Defendants

The deposition of SAIYID MOHAMMAD SWALEH NAQVI was taken on Friday, March 27, 1998, commencing at 8:50 a.m., at the Low Security Correctional Institute at Allenwood, Pennsylvania, before Lee A. Bursten, Registered Professional Reporter and Notary Public.

[18] Mr. Khalil became a nominee of BCCI shares; and then you went ahead and defined "nominee" and asked him whether he understood what a nominee was.

Then he gave his answer. So I'm not sure which question he answered.

MR. LEWIS: I appreciate your clarification. Why don't I ask them both.

BY MR. LEWIS:

Q. You understand the definition that I have given, Mr. Naqvi?

A. Yes, sir.

Q. Based on that definition, did Mr. Khalil become a nominee shareholder of BCCI shares?

A. Yes, for a part of the shares which were registered in his name.

Q. Could you tell us the circumstances under which Mr. Khalil became a nominee shareholder for a part of the shares of BCCI Holdings that were registered in his name?

A. From time to time Mr. Abedi would review the shareholding. He had two objectives in mind at that time. One was that he was interested to expand the base of shareholding and have new shareholders; and second is that he felt that down the line the shareholding structure of BCCI will have to be modified because the capital needs are increasing substantially, the bank is growing rapidly, and it will be necessary to find a shareholder who is either a governmental entity who will give a kind of nationality to the bank, and to also be like a lender of the last resort.

Until that kind of structuring was achieved, Mr. Abedi wanted to make sure that a significant percentage of the shares is held by such holders who would be willing to sell those shares or transfer those shares to this new structure, whenever it takes place.

So he wanted to have special arrangements with some of the shareholders to ensure that a good sized block of shares remain available to him for the purpose of this restructuring. And in one of those reviews, Mr. Abedi asked me that if we will find out from Mr. Raouf Khalil whether he will hold part of his—part of the shares in his name under an arrangement which is like this nominee arrangement you have described.

Q. And after Mr. Abedi asked you to explore this with Mr. Khalil, what happened next?

A. I communicated this to Mr. Ziauddin Akbar because he was the contact and the account manager. And subsequently Mr. Ziauddin Akbar reported to me that he has discussed the matter with Mr. Raouf Khalil, and Mr. Raouf Khalil has shown his willingness to accept this arrangement.

Q. Do you have a recollection, sir, as to approximately when this arrangement began?

A. Sir, practically every time the rights issues were being made. My recollection is that as far as Mr. Raouf Khalil is concerned, initially his shareholding increased by rights issues after he purchased his initial shares. And very soon after he became a shareholder, this split of his shareholding into his own shares and the nominee shares was agreed upon.

Q. Did you have occasion yourself to discuss

* * *

A. To my recollection most of the transactions were at $40 per share. There may be some odd transactions at other prices also.

Q. Was there a transaction with Dr. Ghaith Pharaon at under $40 a share?

A. Yes, sir, because that was a negotiated price for a block of shares, and the basis of it was different.

Q. Was that in and around 1985 that that purchase of the block of shares was undertaken?

A. Yes, sir.

Q. Did there come a time, Mr. Naqvi, that there were discussions with Mr. Khalil regarding the use of his name for BCCI, the use of his name by BCCI in trading?

A. Yes, sir.

Q. Could you tell us about that, sir?

A. Yes, sir. The situation was that BCCI, because of its rapid expansion, was undertaking significant development expenditure. That impacted its profitability. Secondly, there was a need to enhance the profitability of BCCI so that the shares remain attractive to the shareholders.

The one major area where there was room to enhance the profitability was the treasury operations.

Q. Could you describe for the finder of fact in this instance just in general terms the treasury operations and why that opportunity was there?

A. Treasury operations related to the investment of surplus funds of the banks in securities like government bonds, like

stocks in the stock market, and even trading in options, et cetera, or in foreign exchange transactions.

Q. I apologize for breaking off your train, but could you describe for us, sir, how it came to be that there were discussions with Mr. Khalil about using his name to trade for BCCI treasury?

A. Yes, sir. In the background which I just gave, Mr. Abedi wanted to explore the possibility of expanding the treasury operations. By that time Mr. Ziauddin Akbar had become kind of an expert on those operations. And he was recommending that the bank should enter the area of options and futures, which at that time were newly developed instruments.

And he showed by performance of a few months that that did give a good return to the bank. Mr. Abedi was attracted by it. The problem, however, was that because of the small base of capital of BCCI at that time, the limits which were approved by the board of directors for the exposures to be undertaken by BCCI were not enough to meet the kind of profit figures and targets which Mr. Abedi had in mind.

Mr. Ziauddin Akbar came up with the suggestion that he can arrange with some customers that the bank will trade on their account and in their name, and will share the profit. Now, the basic arrangement was that when the customers may be asked to permit the bank to trade in their name, the bank will provide all the funds, and the bank will take all the risks.

And because the bank will take all the risks and provide all the funds, they will only get a nominal share of profit in the form of a fee on the amounts invested. And this was discussed by Mr. Ziauddin Akbar with Mr. Raouf Khalil. Mr. Ziauddin Akbar informed me that Mr. Khalil had agreed to that.

About the same time, Mr. Khalil came to me with Mr. Ziauddin Akbar and confirmed that he had discussed a kind of a partnership arrangement.

Q. When you say he confirmed, Mr. Khalil confirmed?

A. Mr. Khalil confirmed.

Q. To you?

A. To me, that he has agreed to that, he is a well wisher of the bank and he does not mind that the bank gains by his relationship, and he too makes some profit on it.

Q. And from your discussion do you believe that Mr. Khalil knew that his name would be used for trading?

A. Yes, sir.

Q. Was that a topic of discussion?

A. Yes, sir.

Q. Do you recall approximately when this discussion took place?

A. All these developments in our relationship, in BCCI's relationship with Mr. Khalil, were in quick succession. His opening the account in the bank, his becoming a shareholder, and shortly afterwards, his entering this arrangement. It should be about '79, '80, or '81. I have no recollection of the exact time, sir.

Q. Did you have any discussions with Mr. Khalil regarding Mr. Ziauddin Akbar's authority to undertake trading in Mr. Khalil's name?

MR. JOHNSON: Discussions between who?

MR. LEWIS: Were there any discussions between Mr. Naqvi and Mr. Khalil. Thank you for that correction.

BY MR. LEWIS:

Q. Were there any discussions between you and Mr. Khalil regarding Mr. Ziauddin Akbar's authority to undertake these transactions in undertaken in Mr. Khalil's name?

* * *

[64] undertaken in Mr. Khalil's name for treasury in this period had resulted in losses rather than profits?

MR. JOHNSON: I object to the leading.

MR. LEWIS: Let me rephrase it.

BY MR. LEWIS:

Q. Do you know whether the trading undertaken in Mr. Khalil's name in treasury had resulted in profits or losses?

MR. JOHNSON: Objection, rendered leading by the prior question.

THE WITNESS: Can you read the question, sir?

(The record was read as requested.)

THE WITNESS: I had no knowledge of the results of the actual proper treasury transactions conducted in the name of Mr. Raouf Khalil. But I knew that that account was being used for various purposes of the bank. And large sums and funds had passed through those accounts or drawn as loans from those accounts and utilized for the different needs of the bank.

Some of it was used to increase the profits of the bank.

BY MR. LEWIS:

Q. Do you know whether Mr. Khalil had knowledge that his accounts were being used in this way?

A. I do not know, sir.

Q. Had you discussed with him earlier that his name would be used to undertake certain transactions for the bank?

A. What was discussed with him was that his name would be used for the investments in treasury operations.

MR. LEWIS: I would like these two documents to be marked as Mr. Naqvi Exhibit 3 and Mr. Naqvi Exhibit 4.

(Naqvi Deposition Exhibits Numbers 3 and 4 were marked for identification.)

BY MR. LEWIS:

Q. I will represent to you, sir, that Exhibit 3 and Exhibit 4 are the same letter. However, in Exhibit 4 the penultimate paragraph has been

* * *

[160] changed or increased or qualified from time to time, and within these limits Mr. Akbar would operate, carry out treasury operations.

Q. And in the event he wanted, for any reason may have wanted to exceed those limitations, how would he go about that? Would he have to report to you?

MR. LEWIS: I object to the form.

THE WITNESS: The situation changed when

Mr. Akbar made the suggestion that for any increased activities for the purpose of generating more profits, these limits will not be sufficient because they were related to the capital of the bank, and then it was agreed that additional investment would be done through the account of the clients with whom profit-sharing arrangements would be made.

It was in this background that the accounts of Mr. A. R. Khalil were being used.

BY MR. JOHNSON:

Q. After that change did you expect Mr. Akbar to continue to report to you on a daily basis with

* * *

[162] Q. Yes.

A. That's what you mean?

Q. Yes.

A. Yes, on a periodical basis a statement was submitted to the board of directors, if they were any excesses they would appear in that statement. But as I said, the need for the profit of the bank was much larger, and the capital of the bank will not have permitted a further expansion of the limits by the board.

And occasional excess is a different matter. But on a regular basis to do additional business in excess of those limits is a different matter.

Q. And whenever Mr. Akbar exceeded the limits, you expected him to so advise you and the board?

A. Yes, sir.

Q. Did you trust Mr. Akbar?

A. In the beginning, yes.

Q. And did that subsequently change?

A. Yes.

Q. When did it begin to change?

* * *

[170] to my knowledge.

Q. And when you found out about this use of deposits, did you contact the customers and discuss that situation with them?

A. No.

MR. LEWIS: Other than Mr. Khalil?

THE WITNESS: I already excluded Mr. Khalil from this, because I told you that we had an arrangement with Mr. Khalil.

BY MR. JOHNSON:

Q. I'm sorry. Back in 1983?

A. Yes, sir.

Q. And the basis for your understanding that you had that arrangement with Mr. Khalil, that's based upon what?

A. I have already testified to that in detail, but to respond to your question, it was when -- after Mr. Khalil had established his account and after some time it was proposed to him by Mr. Ziauddin Akbar that the bank would like to reduce his accounts in his name for investment for the benefit of the bank, and he will then get a fee for that, and that he will not be liable for the risk.

This implied that the deposits of the – of Mr. Khalil would also be used for that purpose, either directly or by giving loans against a deposit or by giving loans in excess of the deposits.

Q. So in 1983 and 1984, when you learned of this use of deposits of four or five different customers including Mr. Khalil, in that period, 1983 and 1984, to your understanding Mr. Khalil had approved that use of deposits, from what you heard from Mr. Akbar?

MR. LEWIS: I object to the form.

THE WITNESS: These arrangements with --that were had with Mr. Khalil were subsequently confirmed to me by Mr. Khalil, that he has agreed to this. So if the deposits of Mr. Khalil were utilized to finance BCCI shares, it was in the nature of financing an investment, which came within the purview of the arrangement which was agreed by Mr. Khalil.

Mr. Khalil's deposit, even if it was used, was like a borrowing from the deposit to be repaid to Mr. Khalil. So Mr. Khalil is a separate thing. And these other people, other than Mr. Khalil, they were normal deposit holders of the bank. And Mr. Ziauddin Akbar used those deposits for financing the shares of the bank and for the purposes of the bank.

There was no evidence that he was using them for purposes other than for the bank. For the purpose of the bank. And that purpose of the bank was known to me. What was not known to me was that he is financing this from the deposits of people other than Mr. Khalil.

If it would have been only Mr. Khalil, it was -- it would have been understood by me, because it was part of the agreement, or if Mr. Ziauddin Akbar would have gone to outside party, ABC, and taken from him a private loan for the bank for this, it would have been understood to me.

What was not my intention, when I asked

APPENDIX F

[Filed July 15, 1999]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 95-1252 (JHG)

BCCI HOLDINGS (LUXEMBOURG) SOCIETE ANONYME, *et al.*,
Plaintiffs,

v.

ABDUL RAOUF HASAN KHALIL, *et al.*,
Defendants.

JUDGMENT ON COUNTS I. II, and III
AGAINST DEFENDANT KHALIL

Pursuant to Rule 58 of the Federal Rules of Civil Procedure and the Court's Opinion and Order dated June 23, 1999, it is hereby

ORDERED, ADJUDGED AND DECREED that the plaintiffs BCCI HOLDINGS (LUXEMBOURG) S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, ICIC HOLDINGS LIMITED, INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED AND CREDIT AND FINANCE COMPANY LIMITED shall have and recover of and from defendant ABDUL RAOUF HASAN KHALIL the sum of $1,165,207,602 on Counts I, II and III of their complaint, together with reasonable attorneys fees, and costs.

The Court is also issuing on this date a separate judgment on Counts V, VI and VII, in favor of the plaintiffs and against defendant Khalil in the amount of $388,402,534. Any recovery under the Judgment on Counts V, VI, and VII shall be credited, *pro tanto,* against the judgment liability contained herein. To the extent that plaintiffs collect in excess of $776,805,068 under the instant Judgment, those excess funds shall be applied to reduce the amount recoverable under the Judgment rendered on Counts V, VI, and VII.

IT IS SO ORDERED.

/s/ Joyce Hens Green
JOYCE HENS GREEN
United States District Judge

July 15, 1999.

[Filed July 15, 1999]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 95-1252 (JHG)

BCCI HOLDINGS (LUXEMBOURG) SOCIETE ANONYME, *et al.*,
Plaintiffs,

v.

ABDUL RAOUF HASAN KHALIL, *et al.*,
Defendants.

JUDGMENT ON COUNT IV IN FAVOR OF
DEFENDANT KHALIL

Pursuant to Rule 58 of the Federal Rules of Civil Procedure and the Court's Opinion and Order dated June 23, 1999, it is hereby

ORDERED, ADJUDGED AND DECREED that judgment be, and hereby is, entered in favor of defendant ABDUL RAOUF HASAN KHALIL and against plaintiffs BCCI HOLDINGS (LUXEMBOURG) S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, ICIC HOLDINGS LIMITED, INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED AND CREDIT AND FINANCE COMPANY LIMITED on Count IV. IT IS SO ORDERED.

/s/ Joyce Hens Green
JOYCE HENS GREEN
United States District Judge

July 15, 1999.

[Filed July 15, 1999]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BCCI HOLDINGS (LUXEMBOURG) SOCIETE ANONYME, *et al.*,
Plaintiffs,

v.

ABDUL RAOUF HASAN KHALIL, *et al.*,
Defendants.

Civil Action No. 95-1252 (JHG)

JUDGMENT ON COUNTS V, VI, AND VII AGAINST DEFENDANT KHALIL

Pursuant to Rule 58 of the Federal Rules of Civil Procedure and the Court's Opinion and Order dated June 23, 1999, it is hereby

ORDERED, ADJUDGED AND DECREED that the plaintiffs BCCI HOLDINGS (LUXEMBOURG) S.A., BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A., BANK OF Credit AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED, ICIC HOLDINGS LIMITED, INTERNATIONAL CREDIT AND INVESTMENT COMPANY (OVERSEAS) LIMITED AND CREDIT AND FINANCE COMPANY LIMITED shall have and recover of and from defendant ABDUL RAOUF HASAN KHALIL the sum of $388,402,534 on Counts V (Fraud), VI (Conversion) and VII (Unjust Enrichment) of their complaint, together with costs. This sum reflects compensatory damages only and does not include any amount for interest.

IT IS SO ORDERED.

/s/ Joyce Hens Green
JOYCE HENS GREEN
United States District Judge

July 15, 1999

(3)

No. 00-310

Supreme Court, U.S.
FILED
SEP 27 2000
CLERK

IN THE

Supreme Court of the United States

ABDUL RAOUF HASAN KHALIL,
Petitioner,

v.

BCCI HOLDINGS (LUXEMBOURG) S.A.,
BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A.,
BANK OF CREDIT AND COMMERCE INTERNATIONAL
(OVERSEAS) LIMITED, INTERNATIONAL CREDIT AND
INVESTMENT COMPANY (OVERSEAS) LIMITED,
ICIC HOLDINGS LIMITED, AND
CREDIT AND FINANCE COMPANY LIMITED,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUP. CT. R. 29.6

Pursuant to Sup. Ct. R. 29.6, the following is a list of parent corporations of the Respondents. No publicly held company owns ten percent or more of any of the Respondents' stock.

BCCI Holdings (Luxembourg) S.A.

Parent Corporation: None

Bank of Credit and Commerce International S.A.

Parent Corporation: BCCI Holdings (Luxembourg) S.A.

Bank of Credit and Commerce International (Overseas) Limited

Parent Corporation: BCCI Holdings (Luxembourg) S.A.

International Credit and Investment Company (Overseas) Limited

Parent Corporation: ICIC Holdings Limited

ICIC Holdings Limited

Parent Corporation: ICIC Apex Limited

Credit and Finance Company

Parent Corporation: BCCI Holdings (Luxembourg) S.A.

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BCCI Holdings (Luxembourg) S.A. v. Khalil, 56 F. Supp. 2d 14 (D.D.C. 1999), *reprinted in* Petitioner's Appendix at 13a-113a ..... *passim*

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondents BCCI Holdings (Luxembourg) S.A. ("BCCI Holdings"), Bank of Credit and Commerce International S.A. ("BCCI SA"), Bank of Credit and Commerce International (Overseas) Limited ("BCCI Overseas"), International Credit and Investment Company (Overseas) Limited ("ICIC Overseas"), ICIC Holdings Limited ("ICIC Holdings"), and Credit and Finance Company Limited ("CFC"), through their Court Appointed Liquidators,[1] oppose the petition for writ of certiorari. Petitioner asserts two bases for certiorari: 1) to review the decision of the court of appeals which, Petitioner asserts, misapplies this Court's decision in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992); and 2) to resolve a purported conflict among the circuits concerning the application of the proximate causation standard to actions under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, *et seq.*

Petitioner presents no valid grounds for the issuance of a writ of certiorari in this case. In *Holmes*, this Court held that common law proximate causation principles applied to RICO, and the Court anticipated "the infinite variety of claims that may arise [that] make it virtually impossible to announce a black letter rule." 503 U.S. at 272 n.20 (*quoting Associated*

---

[1] The Court Appointed Liquidators are as follows:

a. BCCI Holdings appears through Liquidators appointed by the District Court in Luxembourg: Jacques Delvaux, Marc Kleyr and Michael Larter.

b. BCCI SA appears through Liquidators appointed by the District Court in Luxembourg: Georges Baden, Julien Roden and George Cihra.

c. BCCI Overseas, ICIC Overseas, ICIC Holdings and CFC each appear through Official Liquidators appointed by the Grand Court of the Cayman Islands: Ian A.N. Wight, Michael W. Mackey, and Michael W. Pilling.

Gen. Contractors v. California State Council of Carpenters, 459 U.S. 519, 536 (1983)). The court below properly applied *Holmes* to find that Khalil's racketeering activity directly injured Respondents. Petitioner points not to a true conflict among the circuits, but rather to an entirely expected result of common law judging: that the application of principles of common law proximate causation will generate varying outcomes based upon the markedly different factual contexts presented in individual cases. Moreover, even if the cases cited by Petitioner rose to the level of a conflict in the circuits, certiorari should not be granted in the instant case because, under any of the approaches taken by the courts of appeals, proximate causation was properly established in this action and the result below would remain the same. Accordingly, review by this Court would be unnecessary and therefore improvident.

STATEMENT OF FACTS

Because Petitioner's asserted bases for certiorari rest upon material mischaracterizations of the district court's factual findings and its grounds for awarding damages, it is necessary for Respondents, pursuant to Sup. Ct. R. 15.2, to present the following Statement of Facts.

This action arises from the collapse of the Bank of Credit and Commerce International ("BCCI") in 1991. BCCI was the largest bank failure in history, leaving a deficit in excess of $10 billion. *See United States v. BCCI Holdings (Luxembourg) S.A.*, 69 F. Supp. 2d 36, 37, 40 (D.D.C. 1999). This lawsuit was brought by the Court Appointed Liquidators, who are appointed by courts in Luxembourg and the Cayman Islands to liquidate the principal BCCI[2] companies and recover assets for the benefit of depositors and

[2] BCCI is used to refer collectively to Respondents.

other innocent creditors. *See United States v. BCCI Holdings (Luxembourg) S.A.*, 48 F.3d 551, 554 (D.C. Cir. 1995).

BCCI's collapse was the result of fraud committed on a massive scale by corrupt managers acting in concert with third-party wrongdoers, including the instant Petitioner Abdul Raouf Hasan Khalil ("Khalil"). *See* Pet'r App. at 17a-21a. The schemes that are the subject of this action were at the heart of this massive fraud. The complaint alleged civil RICO, RICO conspiracy, common law fraud, unjust enrichment, and conversion against Petitioner and three co-conspirators, Syed Ziauddin Ali Akbar ("Akbar"), Capcom Financial Services Limited ("Capcom UK"), and Capcom Futures Inc. ("Capcom US").[3] Respondents pleaded and proved before the district court Khalil's participation in two principal racketeering schemes—the "nominee scheme" and the "Capcom scheme." *Id.* at 40a-42a.

With respect to the nominee scheme, Respondents pleaded and proved that Khalil conspired with corrupt officers of BCCI, agreeing that he would serve as a nominee shareholder in the shares of BCCI Holdings; as a nominee shareholder in the ultimate parent of First American Bank, at one time the largest bank in Washington; and as an all-purpose nominee for BCCI officers, permitting his name and his companies to be used to manipulate BCCI's balance sheet and conceal massive losses that, if exposed, would have caused the closure of the bank. *Id.* at 36a-42a, 96a. With respect to the Capcom scheme, Respondents pleaded and proved that Khalil participated in a separate conspiracy with Akbar, a BCCI officer who managed BCCI's treasury operations, to capitalize and finance Capcom UK, a commodities firm that

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[3] The remaining defendants defaulted and default judgments were duly entered by the district court.

they jointly owned.[4] As part of the Capcom scheme, Khalil and Akbar used Akbar's position as head of treasury to siphon more than one quarter of a billion dollars from BCCI into Capcom for their own use. *Id.* at 56a-57a, 97a-99a. In addition, Khalil and Akbar extorted and diverted tens of millions of dollars more from BCCI. *Id.* at 107a-08a.

Seeking to recast the factual record below, Petitioner asserts an improbable argument never made to the district court—that these schemes were somehow undertaken "for the benefit" of BCCI and therefore BCCI's injuries could not have been proximately caused by the schemes. Wholly apart from the flaw in the legal argument, Khalil's assertion that these schemes were intended to benefit BCCI is flatly contradicted by findings of the district court. The district court concluded based upon the evidence that the schemes undertaken were a fraud *on* the BCCI corporations, designed to induce them to disburse funds for a number of illegal schemes being perpetrated by the co-conspirators. *Id.* at 103a-04a. These racketeering schemes were *not* in BCCI's interest; in fact, they were a direct and complete financial disaster for the bank. *E.g.*, *id.* at 86a-87a, 96a-97a.

With respect to the scheme to acquire First American, the district court found that the acquisition was "economically detrimental" and that the common theme of the racketeering scheme was "to acquire and maintain an interest in and control of the First American enterprise, nominally for Khalil and other nominee shareholders, by using BCCI Group funds to conceal the existence of that control, and to use that control *for the benefit of the co-conspirators*." *Id.* at 85a (emphasis added). Similarly, Khalil's agreement to serve as an all-purpose nominee for BCCI's officers enabled BCCI's officers to hide losses which, if revealed "would have shaken the

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[4] The district court found that Capcom UK "represented the formal incorporation of the Khalil-Akbar partnership." *Id.* at 42a, 97a-98a.

confidence of the bank's real investors and almost certainly would have invited increased regulatory scrutiny that would have led to the bank's closure." *Id.* at 44a. With respect to the separate Capcom conspiracy, Khalil parlayed his position as a nominee into an opportunity to loot enormous sums from the BCCI treasury for his own use. *Id.* at 97a-99a.

In awarding damages, the district court limited its award to those amounts which constituted direct and proximate loss to BCCI. The court awarded as damages amounts diverted from BCCI's treasury for the purpose of making direct payments to Khalil, including payments he extorted from BCCI officers ($27.5 million); payments made on Khalil's behalf for his personal expenses (more than $15 million); payments made to companies owned or controlled by Khalil (more than $47 million); and funds siphoned from BCCI by Khalil and Akbar into Capcom UK (more than $236 million). *Id.* at 107a-09a.

The district court explicitly declined to award damages resulting from the investment of BCCI funds in First American. *Id.* at 86a-87a. Although the court found that the investment of these funds was disastrous for BCCI, it held that "too many intervening factors, such as changing market conditions over a considerable period of time and numerous independent decisions by First American management, led to these losses that the Liquidators seek to attribute to Khalil." *Id.* at 87a. Similarly, the court declined to award as damages virtually all of the losses that BCCI incurred as a result of Khalil's service as a nominee for speculative trading. In the court's words, these damages, "founder on the shoals of the proximate cause requirement." *Id.* at 96a.

One category of damages—losses related to certain metals trading—was found by the district court to be directly related to Khalil's participation in the nominee scheme; the court of appeals reversed with respect to this item of damage, finding that there was insufficient evidence to conclude that the metals trading losses were proximately caused by Khalil's

racketeering. *Id.* at 11a-12a, 96a-97a. Moreover, although the district court recognized that BCCI engaged in speculative trading with Capcom UK and the court relied on evidence of circular transactions between Capcom UK and BCCI to establish the pattern of racketeering and certain predicate acts such as money laundering, *see, e.g., id.* at 90a, 98a-99a, the district court awarded no damages for trading funds sent by BCCI to Capcom UK for that purpose. *Id.* at 100a, 109a. Petitioner's suggestion, Pet. at 5, that these damages were awarded for trading activities carried out by Capcom on behalf of BCCI is a misrepresentation of the record. With respect to Capcom, the district court awarded as damages only those funds "acquired and converted" by the defendants. *Id.* at 100a.

In sum, contrary to Petitioner's characterization, the court carefully limited damages to funds that had been directly diverted from BCCI's treasury by the co-conspirators for their own benefit while the conspiracies were ongoing. None of the damages awarded by the district court reflected consequential loss from the making of illegal nominee investments. None of the damages awarded by the district court was the result of exposure of the scheme, and none of it was attributable to the reaction of any third-party to the exposure of the scheme. The sums extracted by Petitioner from BCCI's treasury were gone long before the collapse of BCCI and the subsequent exposure of the enormous fraud from which Petitioner profited.

The district court's extensive opinion reflects thorough consideration of proximate causation and the policies underlying its application as elaborated by this Court in *Holmes*. The district court found, and the court of appeals substantially affirmed, that each item of damage was directly and proximately caused by Petitioner's admitted acts of racketeering. Contrary to the factual misassumptions upon which Petitioner's first question presented for review is

predicated, the district court did *not* find that BCCI benefited from the racketeering activity engaged in by Petitioner; it found that the activity constituted a fraud on BCCI and that BCCI's treasury was directly and catastrophically pillaged to the extent of hundreds of millions of dollars extorted or stolen by Petitioner and his co-conspirators.

ARGUMENT

I. The Court of Appeals Correctly Applied *Holmes v. Securities Investor Protection Corp.*, Which Is Dispositive of the Instant Case.

In *Holmes*, this Court addressed the issue of causation under the RICO statute, holding that common law principles of proximate cause applied to RICO and that a RICO plaintiff must establish "direct" injury in order to recover. 503 U.S. at 264-70. The opinions below in this case do not conflict with *Holmes;* indeed, they are models of the careful and practical common law process of applying law to fact that *Holmes* envisions. Petitioner's request for certiorari based on a purported misapplication of this Court's guidance in *Holmes* is not only without basis, it seeks to involve this Court in a fact-intensive examination of how the proximate cause standard was applied to a complex factual matrix. This is not an appropriate ground for certiorari. Sup. Ct. R. 10.

In *Holmes*, the Securities Investor Protection Fund ("SIPC"), the insurance fund that reimburses customers of insolvent broker-dealers, sued certain defendants who had engaged in securities fraud that resulted in the insolvency of two broker-dealers. SIPC advanced funds to reimburse customers for claims against the insolvent broker-dealers and became subrogated to the customers' claims. *Id.* at 262-63. Acting solely on behalf of those customers whose accounts had not been manipulated by the defendants, but whose losses flowed from the resulting bankruptcies of the broker-dealers, SIPC asserted RICO claims against the perpetrators of the securities

fraud. SIPC contended that these customers were injured "by reason of" the defendants' manipulation of other customers' securities because the securities frauds caused the broker-dealers to fail. This Court denied the claims as derivative and indirect, holding that "[t]he broker-dealers simply cannot pay their bills, and only that intervening insolvency connects the conspirators' acts to the losses suffered by the non-purchasing customers and general creditors." *Id.* at 271. This Court noted that the liquidating trustees of the insolvent broker-dealers, who were directly injured by the manipulation, were proper RICO plaintiffs who could be counted on to bring suit for the law's vindication. The Court found that the non-manipulated customers were simply general creditors who should seek relief from the liquidating trustees in the insolvency proceedings rather than engage in satellite litigation which would raise complicated issues of apportionment and priorities. *Id.* at 272-74.

Holmes held that common law principles of proximate causation applied to RICO cases. Citing *Prosser and Keeton on the Law of Torts*, this Court stated, "Here we use 'proximate cause' to label generically the judicial tools used to limit a person's responsibility for the consequences of that person's own acts." *Id.* at 268. The Court drew a sharp distinction between direct and derivative injury, but, taking into account "'the infinite variety of claims that may arise,'" *id.* at 272 n.20 (citation omitted), and the "many shapes [the concept of proximate cause] took at common law," *id.* at 268, left the precise parameters of proximate cause to be worked out on a case-by-case basis. Relying on its earlier decision in *Associated General Contractors v. California State Council of Carpenters*, 459 U.S. 519 (1983) ("*AGC*"), the Court recognized that its decision not to apply a bright-line test for proximate cause could result in different emphases or approaches being taken by courts in different factual circumstances. *See Holmes*, 503 U.S. at 272-73 & n.20; *AGC*, 459 U.S. at 535-36 & n.33. But the Court emphasized

the need for flexibility to consider the "infinite variety" of factual situations and expressly declined to adopt specific "black letter" tests for direct injury that had been employed by certain lower courts. *Holmes*, 503 U.S. at 272 n.20.[5]

The courts below in this action properly applied *Holmes* in finding that Respondents were directly injured by the Petitioner and his co-conspirators. The district court stated, "The parties agree that a defendant's acts proximately cause plaintiffs injuries when such acts are a substantial factor in the sequence of responsible causation, and where the plaintiff's injury was reasonably foreseeable or anticipated as a natural consequence of those acts." Pet'r App. at 86a. This formulation, which was never challenged by Petitioner and was left undisturbed on appeal, is consistent with District of Columbia common law, which requires the finder of fact to determine that: i) the defendant's "act or failure to act played a substantial part in bringing about the injury or damage;" and ii) "the injury or damage was either a direct result or a reasonably probable consequence of the act or failure to act." *Standardized Civil Jury Instructions for the District of Columbia*, Instruction No. 5-12 (Richard W. Stevens ed. 1998); *Tarpeh-Doe v. United States*, 28 F.3d 120, 124 (D.C. Cir. 1994).

Under this test, there is no question that BCCI was directly injured by the conspirators' misconduct. *See Hamid v. Price Waterhouse*, 51 F.3d 1411, 1419-20 (9th Cir. 1995) (RICO claims belong to the BCCI corporations not to the depositors who were only derivatively injured). BCCI does not stand behind the injured parties—one step removed—as did SIPC

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[5] Among the formulations the Court expressly declined to adopt as a "black letter" rule was the one applied by the Eleventh Circuit in *Pelletier v. Zweifel*, 921 F.2d 1465 (11th Cir. 1991). *Holmes*, 503 U.S. at 272 n.20. In *Pelletier*, the court considered whether the plaintiff was the intended target of the racketeering activity, which is strikingly similar to the "black letter" rule urged by Petitioner.

in *Holmes*. BCCI, an insolvent banking group suing through its Court Appointed Liquidators, is in the same position as the insolvent broker-dealers in *Holmes*, which this Court delineated as the proper, directly injured plaintiffs in that case. 503 U.S. at 273-74.

Contrary to Petitioner's argument that the court of appeals failed to undertake an analysis of the policy considerations underlying *Holmes*, Pet. at 8, both the district court and the D.C. Circuit applied proximate cause to reflect "'ideas of what justice demands, or of what is administratively possible and convenient.'" Pet'r App. at 11a (*quoting Holmes*, 503 U.S. at 268). The court of appeals discussed each of the policy considerations discussed in *Holmes*: it noted the importance of applying rules of proximate cause to prevent the courts from becoming "ensnared in administratively complex questions over factual causation and apportionment of damages," *id.*, and stated that proximate cause should be applied to preclude suit by indirectly injured plaintiffs because "directly injured victims can generally be counted on to vindicate the law as private attorneys general." *Id.*

Relying on these policy considerations, the court of appeals substantially affirmed the awards of damages of the district court. Petitioner's argument to this Court that two of the factors were improperly applied by the court of appeals does not withstand analysis. Petitioner suggests that BCCI's injury was derivative of injury to First American or to certain undefined U.S. regulators. But there was no question of apportionment of damage or the existence of more directly injured victims in this case: all of the damage awarded reflected funds paid away from the treasury of BCCI into the pockets of Khalil and his co-conspirators. These were losses to BCCI and to BCCI alone. Nor can it be argued that the court of appeals failed to consider the "difficult and complex cost/benefit analysis" related to Khalil's nominee investment in First American. Pet. at 13. No evidence was ever presented, and Petitioner cites none, that BCCI experienced any

economic benefit from the use of its funds to purchase First American.

Accordingly, Petitioner's first argument for certiorari—that the court of appeals misapplied *Holmes*—is without support in fact or law. The court of appeals affirmed an award of damage based upon direct loss to BCCI. As a result of the racketeering conspiracy, funds were siphoned away from BCCI into the hands of the wrongdoers and never recovered. In finding that this harm was proximately caused by Petitioner's racketeering, the court of appeals was faithfully applying "ideas of what justice demands." *Holmes*, 503 U.S. at 268. Petitioner's suggestion that he should not be held to account for the hundreds of millions of dollars of extortion and payoffs he received because, contrary to the finding of the courts below, one of the co-conspirators might have subjectively contemplated some benefit in the scheme is belied by the facts of this case and by the law of proximate causation. *See In re EDC, Inc.*, 930 F.2d 1275, 1279-80 (7th Cir. 1991). Petitioner's argument would turn logic and justice, and *Holmes*, on their heads.

II. There Is No Conflict Among the Circuits on Any Issue of Principle.

Petitioner's other ground for review is a purported conflict between the law applied by the Second and Seventh Circuits and that applied by the District of Columbia Circuit in the instant case. Specifically, Petitioner argues that the Second and Seventh Circuits have adopted a bright-line rule in RICO actions that a corporate plaintiff seeking damages for a racketeering act involving its own officers and directors must establish that the corporation was the target of the racketeering conduct and that harm to the plaintiff was a preconceived purpose of the racketeering scheme. The cases invoked by Petitioner, however, do not represent a fundamental conflict in circuit law. Each of the referenced circuits

applies the same general principles of common law proximate causation articulated in *Holmes*. As this Court anticipated, application of these principles to varying sets of facts will result in varying resolutions. That is an expected outcome of common law analysis, not a conflict in the circuits.

Each of the referenced circuits has adopted the general rule that to be actionable, a RICO injury must be direct. This restates the rule of *Holmes* that RICO injury must have been proximately caused by the racketeering activity. *See* Pet'r App. at 10a-11a; *Israel Travel Advisory Serv., Inc. v. Israel Identity Tours, Inc.*, 61 F.3d 1250, 1257 (7th Cir. 1995); *Raybestos Prods. Co. v. Younger*, 54 F.3d 1234, 1243 (7th Cir. 1995); *Laborers Local 17 Health & Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229, 234-39 (2d Cir. 1999); *First Nationwide Bank v. Gelt Funding Corp.*, 27 F.3d 763, 769 (2d Cir. 1994). Following the direction of this Court, the Second and Seventh Circuits have expressly *refused* to adopt a bright-line rule for the application of proximate cause, *see Laborers Local*, 191 F.3d at 238-39 & n.4; *Raybestos*, 54 F.3d at 1243, but have acknowledged the need for flexibility to address the specific facts of each case. Indeed, in *Raybestos*, the Seventh Circuit cites *Mendelovitz v. Vosicky*, 40 F.3d 182 (7th Cir. 1994), which is the case relied on by the Petitioner for the proposition that the Seventh Circuit has adopted a strict uniform rule concerning application of proximate cause. But the Seventh Circuit concludes in the same paragraph of the discussion, "How 'direct' [the injury must be], of course, cannot be reduced to a single uniformly applicable equation. Instead notions of justice and policy often dictate the boundaries of 'proximate causation.'" *Raybestos*, 54 F.3d at 1243. Thus, although the specific cases relied upon by Khalil may present particular applications of proximate causation to specific sets of facts, those courts of appeals have made clear, contrary to Petitioner's argument, that they are *not* articulating a single standard with respect to the application of proximate cause.

As anticipated in *Holmes*, the cases cited by Petitioner reflect each court's common-sense application of the varied factors of proximate cause to the particular case before it in determining whether the asserted injury was sufficiently direct to assign liability to the defendant. The principal case relied on by Petitioner, *In re American Express Co. Shareholder Litigation*, 39 F.3d 395 (2d Cir. 1994) ("*American Express*"), was a derivative suit filed by shareholders on behalf of the American Express Company against its directors and officers. The complaint asserted that American Express had been damaged through a defamation scheme instituted by its officers against a potential competitor. When the scheme was exposed, the competitor threatened to sue and a settlement was agreed. The complaint sought to recover the funds paid in settlement, as well as additional damage to American Express' good will and business. The Second Circuit determined that damage to American Express was not proximately caused by the RICO violation because any harm to American Express was caused by the failure of the scheme, its exposure and the competitor's reaction to it, rather than by the scheme itself. *American Express*, 39 F.3d at 400. These intervening causes were found to have broken the chain of direct causation; accordingly, the harm to the corporation from the scheme was found to be insufficiently direct for recovery.

Similarly, *Mendelovitz* was a shareholders' derivative suit alleging that Comdisco's officers had engaged in a scheme to create a "computer chop-shop" in violation of Comdisco's lease agreements with IBM. When IBM discovered the scheme, it sued Comdisco. Mendelovitz's suit on behalf of Comdisco asserted that the corporation was injured in the amount it had spent on legal fees, and in a loss of good will associated with the exposure of the violations. Based on *Holmes*, the Seventh Circuit affirmed the district court's determination that Comdisco's injury was not proximately caused by the racketeering scheme, because any damage to

Comdisco was caused by exposure of the violation, and by the intervening cause of IBM's decision to sue for damages. *Mendelovitz*, 40 F.3d at 187.

Thus, in both *American Express* and *Mendelovitz*, the corporations were not directly injured by the actions of their officers. Rather, any injury to the corporation occurred when i) the actions were exposed, *and* ii) a third party, whose injuries were direct, took action against the corporations, requiring the corporations to expend legal fees and pay damages. Whatever the merits of the approaches announced by the Second and Seventh Circuits regarding these "boomerang" injury actions, these cases do not announce any bright-line standards that would have application to the very different case currently before this Court. In asserting the existence of a conflict based on these fact-intensive determinations, Petitioner seeks to immerse the Supreme Court in a comparative common law inquiry that *Holmes* clearly entrusted to the district courts and courts of appeals.

Petitioner tries to draw false parallels to *American Express* and *Mendelovitz* by identifying two third parties who, he asserts, were the targets of the racketeering scheme—First American Bank and various American bank regulators. Pet. at 12-13. But unlike *American Express* and *Mendelovitz*, the damages awarded by the court in this case were in no way dependent on any injury to these third parties. BCCI—no one else—suffered these losses when its funds were taken, long before any exposure of the BCCI scandal. First American did not sue BCCI causing its losses. In the single area where the injuries may conceivably have overlapped—damages incurred because of First American's decline in value—the district court expressly refused to award damages. Pet'r App. at 86a-87a. There was no direct economic injury to U.S. regulators of which BCCI's losses were derivative. Thus, Petitioner's analogy to *American Express* and *Mendelovitz* fails. *See Israel Travel*, 61 F.3d at 1257; *Mid Atlantic*

Telecom, Inc. v. Long Distance Servs., Inc., 18 F.3d 260, 264 (4th Cir. 1994).

To the extent that *American Express* and *Mendelovitz* consider whether the plaintiff corporation was the "target" of the racketeering activity, they do so as an individual factor relevant to proximate causation in the particular cases before them.[6] Petitioner attempts to ratchet one of "the many shapes [the concept of proximate cause] took at common law," *Holmes*, 503 U.S. at 268, into an issue of legal principle in which the circuits are in conflict. Yet it is Petitioner's position, and not the decisions of the Second, Seventh and D.C. Circuits, that is at odds with the case-by-case consideration that *Holmes* requires.

As this Court has observed, "Legal theory is too rich in content not to afford alternative ways, and frequently several of them, for stating an acceptable judgment." *AGC*, 459 U.S. at 537 n.32 (*quoting* Leon Green, Comment, *Mahoney v. Beatman: A Study in Proximate Cause*, 39 Yale L.J. 532, 533 (1930)). To the extent that the language utilized in *American Express* and *Mendelovitz*, focusing on the target or the purpose of the scheme, constitutes an alternative focus in arriving at a correct decision with respect to the directness of

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[6] Respondents do not read either the Second or Seventh Circuits as requiring post-*Holmes* that every corporate RICO plaintiff must prove he was the "target" of the racketeering scheme or that harm to him was the preconceived purpose of the scheme. Were the Second and Seventh Circuits actually announcing a black letter rule to this effect, such a rule would be in conflict both with *Holmes* and the D.C. Circuit's opinion in this case which follows *Holmes*. But the extensive precedent in these circuits is highly suggestive that the Second and Seventh Circuits have not adopted such a uniform rule, although these factors may be among those considered by the courts in determining whether a particular harm was proximately caused by particular conduct in a particular case.

harm in those cases, they are not in conflict with either the D.C. Circuit's decision in this case or with *Holmes*.[7]

III. Certiorari Would in Any Event Be Imprudent Because Resolving the Purported Conflict in the Circuits Would Not Change the Result Below.

Even if this Court were to determine that there was a conflict in circuit law, a writ of certiorari should not issue because resolution of the proximate cause question by the Court would not affect the outcome of this case. As the decisions in the courts below make clear, under *any* test, the harm to BCCI for which damages were awarded was direct and proximately caused by the racketeering scheme.

Khalil argues that BCCI could not have been a target of the scheme because these disastrous schemes were intended to "benefit" the corporations by permitting BCCI to continue as a business despite its catastrophic losses and resulting insolvency. Pet. at 13. Khalil's argument is not only unsupported by the factual record, it is legally flawed. The continuation of a corporation's existence based on the concealment of losses and illegalities is a harm, *not* a benefit to the corporation. *See In re Sunrise Sec. Litig.*, 916 F.2d 874, 883 (3d Cir. 1990); *Hamid*, 51 F.3d at 1419; *Schacht v. Brown*, 711 F.2d 1343, 1359 (7th Cir. 1983); *In re Investors Funding Corp. of N.Y. Sec. Litig.*, 523 F. Supp. 533, 541 (S.D.N.Y. 1980). But, in any event, BCCI was not awarded damages for the deepening of its insolvency.

BCCI did suffer massive losses on account of the criminal forfeiture of its illegal investment in First American, and the understatement of BCCI's capital that was disguised by the

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[7] Petitioner relies extensively on a district court decision, *BCCI Holdings (Luxembourg) S.A. v. Pharaon*, 43 F. Supp. 2d 359 (S.D.N.Y. 1999). That decision, which Respondents submit is a misapplication of proximate cause standards announced in *Holmes*, is currently on appeal in the Second Circuit.

stock nominee scheme permitted the conspirators to continue squandering BCCI's dwindling assets. But the district court did not award these losses as damages. Instead, the court carefully limited its award to damages as to which there could be no question under any formulation of proximate cause.

The court did not award damages that even arguably arose out of an intent to benefit BCCI. The court awarded as damages those funds that Petitioner extorted from BCCI, Pet'r App. at 62a-63a, and those funds expended to pay his personal expenses in connection with his nominee role. *Id.* at 42a-43a, 107a-08a. Not only were these BCCI losses a direct and reasonably foreseeable consequence of Khalil's racketeering conduct, but at least as to these elements of damage, BCCI was his sole, direct and intended target. With respect to the Capcom conspiracy, under which the vast majority of damages were awarded, it is inarguable that BCCI was the sole target of this conspiracy whose purpose was to loot BCCI funds for the Petitioner's own benefit. It is difficult to conceive how Khalil intended to benefit BCCI by looting more than $236 million from the BCCI treasury, obtaining more than $27 million in direct payments (including payments extorted from BCCI officers), and arranging for an additional $15 million in payment of his expenses and for transfer of more than $47 million to companies owned by him and his co-conspirator Akbar. *See id.* at 107a-09a. Even under the more stringent standards which Petitioner suggests are imposed in the Second and Seventh Circuits, the looting of a corporation constitutes direct harm for which RICO damages may be awarded, and the award in this case would not be affected. *See In re Teledyne Defense Contracting Derivative Litig.*, 849 F. Supp. 1369, 1375 n.2 (C.D. Cal. 1993). Because the Court's resolution of the question presented by Petitioner would not affect the determination in this case, it would be improvident for this Court to review the question. *See Kleyr v. A.O. Smith*

Corp., 521 U.S. 179, 191-92 (1997) (declining as a matter of prudence to address statute of limitations accrual tests that would not affect outcome of case before Court).

CONCLUSION

Wherefore, for the reasons stated herein, Respondents respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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